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POLITICAL SCIENCE QUARTERLY.

MUNICIPAL HOME RULE.

NO principle of law is more firmly established than that municipal corporations are the creatures of the legislature, which may enlarge, abridge or entirely withdraw their powers in its own discretion.[1] With the single exception that municipal property owned by the corporation in its own right may not be taken from it, the legislature has, by common law, absolute power over municipal affairs. While the early constitutions of nearly all the commonwealths contained bills of private rights, municipal corporations were considered as so completely governmental in character that they could not safely be protected against legislative interference, except in so far as such protection was afforded to them as owners of private property. The existence of such a rule of law makes it possible for the legislature to exercise control not only over such of the functions discharged by the city as interest the state as a whole, but also over matters of a purely local and *quasi* private character. That the legislature has, as a matter of fact, controlled both these fields, needs no demonstration. In some of our commonwealths its attitude has been more worthy of censure than in others; but in all alike it has failed to distinguish between matters of a public character, in which its interference is justified, and matters of a private character, which should belong within the realm of municipal local autonomy.

[1] Meriwether *vs.* Garrett, 102 U. S., 472–511; Rogers *vs.* Burlington, 3 Wallace, 654.

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The attitude of the legislature toward municipal corporations is, however, very largely excusable, and for several reasons. In the first place, under a system of constitutional law which relies upon a written constitution and its maintenance through the courts, rather than upon the wisdom of the legislature, for the protection of the sphere of individual freedom, the legislature is liable to throw off the responsibility for its action upon the courts; and the habit thus formed with regard to ordinary private rights becomes extremely disastrous when applied to legal persons like municipal corporations, which are not, like natural persons, protected by the constitution. In the second place, the fact that many functions of central concern are discharged by municipal corporations or by their officers, makes it absolutely necessary for the legislature at times directly to interfere in the administration of city affairs, so far as they involve matters which affect the state as a whole. The habit of interference is then insensibly extended to matters which do not at all affect the central government of the state or the interests of the community at large.

This — from the scientific point of view — unwarranted extension of the legislature's control is further a natural result of the rule that has been almost universally adopted as to municipal powers. No better or more authoritative statement of this rule can be found than that given by Judge Dillon and approved by many of the latest judicial decisions :

> It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words. Second, those necessarily or fairly implied in or incident to the powers expressly granted. Third, those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable. Any fair reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.[1]

The necessary result of such a rule of law, with the accompanying strict construction which is usually adopted,[2] is that

[1] Dillon, Municipal Corporations, fourth edition, p. 145. [2] *Ibid.*, 148.

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municipalities must often apply to the source of authority, that is, to the legislature, for an increase of power, in order to remove any doubt as to the existence of particular powers which it is desired to exercise, but which are not clearly conferred by the charter. This condition of things has been aggravated by the fact that originally in this country all city charters were to be found in special acts, the passage of which, with their amendments, necessitated frequent action by the legislature with regard to municipalities. The legislature, being called upon continually to legislate thus with regard to purely local matters, easily became accustomed to consider itself the proper authority to regulate such matters, as well as those in which the municipality acts as the agent of the state government. There has been an utter failure to distinguish any sphere of municipal home rule into which the legislature should not intrude.

The undoubted and well-recognized evil of continual legislative interference in purely local matters has caused a resort to the remedy which had before been employed in protecting the sphere of freedom of private citizens. We have in many instances incorporated into our later constitutions provisions which limit very largely the power of the legislature to interfere with the affairs of municipal corporations. Thus the constitutions of many of the commonwealths direct the legislature to provide by general laws for the incorporation of cities. In others the legislature is forbidden to pass special laws relative to particular matters of local concern, *e.g.*, relative to highways and streets. Finally, in some of the constitutions it has been enacted that the officers of municipal corporations shall be elected by the people thereof, or appointed by the municipal authorities in such manner as the legislature shall provide.[1] In a few states the constitutional provisions are even more stringent. Thus in Missouri, California and Wash-

[1] See Stimson, American Statute Law, I, p. 110, sec. 500; p. 102, sec. 441; p. 95, sec. 395; p. 47, sec. 210 E 5. See also the constitution of New York, art. x, sec. 2; art. xii, sec. 2.

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ington it is further provided that cities of a certain size shall have the right to frame their own charters.[1]

This method of securing to these *quasi*-public persons called municipal corporations their sphere of individual liberty and freedom of action has the usual disadvantage of drastic remedies: it is liable to produce greater evils than those which it was intended to remove. Thus, there is usually in a state at least one city whose institutions, resulting from its situation, are so peculiar as to render almost impossible the application to it of a rule which may be applied with advantage to the cities of the state as a whole. The dangers of the Procrustean procedure necessary in such cases are, it is true, avoided in a measure by the method adopted in Missouri, California and Washington, where cities of a certain size have the power to frame their own charters; and such dangers completely disappear under the system of securing municipal home rule adopted in the recent constitution of New York, which provides for a suspensive veto, to be exercised, after a public hearing, by the municipal authorities of the city affected, upon all special legislation relating to municipal property, affairs or government.[2] But in all these cases of constitutional restriction we are confronted by an extremely important and perplexing legal problem. Before any restriction has been inserted in the constitution, the question as to the limits of the sphere of municipal activity is a question largely of academic interest; but just so soon as such a restriction becomes a provision of the positive law, the determination of the sphere of municipal activity which is to be protected against encroachments by the legislature becomes a problem of supreme legal importance; for upon its solution depends the constitutionality of many acts of the legislature relative to municipal competence.

The most important provisions contained in the commonwealth constitutions relative to the power of the legislature to create and regulate municipal corporations are of two kinds:

[1] See Oberholtzer, "Municipal Home Rule," in the *Annals of the American Academy of Political and Social Science*, III, 736.

[2] New York constitution, art. xii, sec. 2.

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First, those which forbid the legislature to grant corporate powers by special act; second, those which forbid the legislature to pass special acts regulating "county, city or town affairs" or the "internal affairs of counties, cities or towns," or which assure to municipalities the right to elect their own officers. Often we find at the same time a positive injunction laid upon the legislature to provide for the incorporation of cities by general law.

These constitutional provisions do not, indeed, attempt so much to limit the regulative power of the legislature over municipal corporations as to insist upon the exercise of this power in a particular manner. At the same time, they tend indirectly to strengthen the position of municipal corporations over against the legislature; for the prohibition of special laws often prevents the legislature from interfering in matters of purely local concern affecting some particular municipal corporation, and obliges it to delegate much greater powers than it otherwise would delegate to local bodies. The exact degree of limitation upon the power of the legislature over the localities that results from these constitutional provisions can be determined only by the answers to two questions: First, what is a special act under the constitution? and second, what are the corporate powers which may not be conferred by special act, or what are the "affairs" or the "internal affairs" of the corporation which may not be regulated by special act?

I. *What is a Special Act?*

The recent constitution of New York is almost the only one which specifically defines a special act. Such an act is said to be one which affects less than all the cities of one of the classes of cities for which the constitution provides. In the other commonwealths the answer to the question is left to the courts in their construction of the constitution.

It is to be noticed here, in the first place, that the courts do not hold themselves precluded from investigating facts by the passage of an act which is general in form, but which is actually special in its application. The Illinois constitution

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forbids the legislature to pass special laws regulating county and township affairs. In the case of Devine *vs.* Cook County,[1] it was held that an act applying to counties of over one hundred thousand inhabitants whose purpose was to erect a court-house, jail and other public buildings, and to fund the floating debt of the county — the act referring to the recent destruction of such buildings by fire — was unconstitutional. In this case the duration of the law was for six years, and the court in giving its opinion said:

> Its very terms preclude it from having any application to any county except the County of Cook; for we take judicial notice no other county in this state contains over one hundred thousand inhabitants, nor can it be expected by any ordinary influx or increase of population, that any other county will have that population within the brief period fixed for the duration of this law, namely, within a period of six years from the time the act should take effect.

While this case is one of the few which expressly lay down the principle that the courts will take judicial notice of the facts surrounding the act, almost all the decisions which the courts have been called upon to make in the construction of similar constitutional provisions are really based upon this principle.

On the other hand, the courts do not attempt to prevent the legislature from classifying municipal corporations. It is explicitly declared in many cases that, notwithstanding the existence of a constitutional provision prohibiting special acts, the legislature may still classify municipal corporations, since it is practically impossible to pass one general law which can be applied with advantage to all the municipalities of the state. And further, provided the method of classifying is proper, the courts regard as constitutional a classification which may, at the time it is made, place only one individual in a class.[2] They insist, however, that the classification shall be based upon the varying necessities of the different municipal corporations

[1] 84 Illinois, 590.

[2] In some cases the constitution itself provides explicitly for a classification of cities, and fixes the number of classes — generally four.

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within the state. Thus, in the case of State *vs.* Hammer,[1] the court says: "The marks of distinction on which the classification is founded must be such, in the nature of things, as will in some reasonable way at least, account for or justify the restriction of the legislature." An example of legitimate classification would be found, the court suggests,

> in a law that should give to all cities in the state situated on tide water, the privilege of using such water in connection with sewers. In such an enactment, but a part of the cities of the state would be embraced, but the classification would be lawful and proper, inasmuch as the places embraced would be possessed of a characteristic distinct from those possessed by the excluded places, such characteristic being of such a nature as to afford a reasonable ground for such special legislation.

Another instance of a proper basis of classification is to be found in Bronson *vs.* Oberlin.[2] In this case it was held that under a constitutional provision which prohibited the legislature from granting corporate powers by a special act, it was perfectly proper for the legislature to pass an act affecting only incorporated villages "having within their limits a college or a university," inasmuch as the presence of such an institution might give to the village a characteristic which was peculiar to itself. In this particular case the act attempted to regulate matters connected with excise administration. In the case of Van Riper *vs.* Parsons[3] this principle was carried still further. Here it was held that an act to repeal all acts which gave to the Senate and General Assembly in joint meeting the appointment of commissioners to regulate municipal affairs, was valid, notwithstanding the fact that it applied to only one city; and the court said in rendering its opinion:

> The law in all its provisions is general, broad enough to reach every portion of the state and abating legislative commissions for the regulation of municipal affairs, wherever they existed. Such commissions are distinguished from other sorts of municipal governments by characteristics sufficiently marked and important to make them

[1] 42 New Jersey Law, 435.
[2] 41 Ohio State, 476.
[3] 40 New Jersey Law, 123.

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clearly a class by themselves, and upon the whole of this class this law operates equally by force of terms which are restricted to no locality. A law so framed is not a special or local, but a general law, without regard to the consideration that within the state there happens to be but one individual of the class or one place where it produces effects.

Population also has been held to be a proper basis of classification, even if through its application only one individual is to be found in the class at the time it is made. Thus it has been held that a law putting cities of over three hundred thousand inhabitants in a single class was perfectly constitutional, although only one city in the state was in the class; and the court said, in rendering its opinion:

> Legislation is intended not only to meet the wants of the present, but to provide for the future; it deals not with the past, but in theory at least anticipates the needs of a state healthy with a vigorous development. It is intended to be permanent. At no distant day Pittsburgh will probably become a city of the first class. . . . In the meantime, is the classification as to cities of the first class bad because Philadelphia is the only one of the class? We think not. Classification does not depend upon numbers. The first man, Adam, was as distinctly a class when the breath of life was breathed into him as at any subsequent period. The word is used not to designate numbers, but the rank or order of persons or things; in society it is used to indicate equality or persons distinguished by common characteristics, as, the trading classes, the laboring classes; in science it is a division or arrangement containing subordinate divisions of order, genus or species.[1]

The courts do not, however, sustain a legislative classification that is designed to operate only in the present and on an existing state of facts, but not in the future. Thus, where the constitution provides that the legislature shall not pass local or special laws regulating the affairs of counties and cities, it has been held that an act providing for the establishment at once of a reform school in every county having a city

[1] Judge Paxson, who renders the opinion of the court, says that if the classification of cities is not regarded as constitutional, certain cities will be deprived of all means of development. Wheeler *vs.* Philadelphia, 77 Pa. St., 338. See also State *vs.* Pugh, 43 Ohio St., 98.

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of over fifty thousand inhabitants, is void if it apply in fact to only one county.[1] A similar case is that of State *vs.* Herrman.[2] Here an act provided that the governor should "appoint and commission, in all cities having a population of one hundred thousand inhabitants or more, one notary public only to every three thousand inhabitants." In another section the act provided that all acts inconsistent with it were repealed and that the office of every notary public in such city who held a commission bearing date prior to the passage of the act, and whose term of office had not expired at the time the act became a law, should be abolished. The act was held unconstitutional.[3] Again in Pennsylvania, where the constitution prohibits local or special laws touching the affairs of cities and counties, an act was declared void which regulated the pay and duties of certain officers in counties having between 100,000 and 150,000 inhabitants. Though four counties were affected, the act was so framed as to apply only in the present, and not to affect other counties whose future population might bring them within its scope.[4] Another case to the same effect is that of Topeka *vs.* Gillette.[5] Here an act applied to three cities in the state and allowed them only fourteen days to begin, and fifty-eight days to complete, the action required by its provisions. It was held that such an act was void under a constitutional provision forbidding the legislature to confer corporate powers by special act.

This last mentioned constitutional provision was likewise the ground of a decision that it was improper for the legislature to pass an act referring to cities by name; as for example, an act that "the Cities of Osage, Mission, Wichita, Council Grove and the Town of Sabetha in Nemaha County, shall be constituted cities of the second class."[6]

Finally the courts, by the great weight of authority, have held that classification according to geographical conditions is

[1] State *vs.* the County Court of Jackson County, 89 Missouri, 237.

[2] 75 Missouri, 340.

[3] See also State *vs.* Township Committee of Northampton, 14 Atlantic Reporter, 587.

[4] McCarthy *vs.* Commonwealth, 110 Penn. St., 243.

[5] 32 Kansas, 431.

[6] City of Council Grove, 20 Kansas, 619.

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improper under constitutional provisions prohibiting special legislation. The ground here is that geographical conditions are permanent, and that accordingly any act which at the beginning of its application is special in character must always remain so, and is, therefore, unconstitutional. The strongest case upon this point is that of the Commonwealth *vs.* Patton.[1] This case arose under an act which provided

> that in all counties of this commonwealth where there is a population of more than sixty thousand inhabitants and in which there shall be any city incorporated at the time of the passage of this act, with a population exceeding eight thousand inhabitants, situated at a distance from the county seat of more than twenty-seven miles by the usually travelled public road; it shall be the duty of the president judge and of the additional law judge, or either, to make an order providing for the holding of one week of court after each regular term of court for said county for the trial of civil and criminal cases in said city.

In refusing an application for a *mandamus* to compel the commissioners of the county affected by the act to provide suitable buildings for the courts, it was held that the act was contrary to a constitutional provision forbidding the legislature to pass any special or local law regulating the affairs of counties and townships. In delivering the opinion of the court Chief Justice Paxson said:

> This is a classification run mad. Why not say all counties named Crawford, with a population exceeding sixty thousand inhabitants, that contain a city called Titusville, with a population of over eight thousand inhabitants, situated twenty-seven miles from the county seat? Or all counties with a population of over sixty thousand, watered by a certain river or bounded by a certain mountain? There can be no proper classification of cities or counties, except by population. The moment we resort to geographical distinctions, we enter the domain of special legislation, for the reason that such classification operates upon certain cities and counties to the perpetual exclusion of all others. . . . That is not classification which merely designates one county in the commonwealth and contains no

[1] 88 Pennsylvania State, 258.

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provision by which any other county may by reason of its increase of population in the future come within the class.[1]

II. *What are Municipal Affairs?*

A consideration of the cases which have been decided relative to this question will lead to the conclusion that to the courts which have been called upon to consider the matter, the special character of the act involved has assumed much greater importance than the general character of the powers which the legislature is forbidden to grant by special act. The decisions do not reveal any very definite conclusion as to what are corporate or municipal or internal, as distinguished from governmental affairs, and the judges have been wont to apply the prohibition of special legislation without discrimination to all matters actually attended to by the territorial divisions or their officers.[2] This failure to discriminate has resulted in an unduly wide interpretation of the term corporate, municipal or internal affairs, which is made to include many matters that, in other branches of the law, are regarded as public and governmental in character. Thus in the case of Commonwealth *vs.* Patton, considered above, it was held that a special act affecting the system of judicial administration came within the constitutional prohibition of special acts relating to the affairs of counties and towns. In the same way it has been held that special acts relating to township roads and the police force were, under a similar prohibition, unconstitutional.[3] In most

[1] To a similar effect is the New Jersey decision in the case of State *vs.* Philbrick, 15 Atlantic Reporter, 579. Here an act referring exclusively to boroughs which are sea-side resorts, was held unconstitutional, the court saying: "Contiguity to sea is no ground for the existence of a different rule in respect to the general amount of taxes to be raised [the act affected the method of raising taxes], and I am clear that no reason can be suggested why the power to designate the amount should, in boroughs not lying on the ocean, be committed to the people at large, while in boroughs on the sea the power should be placed in the hands of commissioners." See also the case of Clark *vs.* Cape May, 14 Atlantic Reporter, 581, which referred to sea-side boroughs and adopted a different method for the organization of their police force.

[2] *Cf.* Horton *vs.* Mobile School Commissioners, 43 Ala., 598.

[3] State *vs.* Township Committee of Northampton, 14 Atlantic Reporter, 587; Board of Chosen Freeholders *vs.* Buck, 51 New Jersey Law, 155; Clark *vs.* Cape May, 14 Atlantic Reporter, 581.

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other branches of the law all these matters — the administration of justice, of highways and of the police — are regarded as matters rather of central than of local concern.

On the other hand it has been held that, notwithstanding the existence of a constitutional provision forbidding the legislature to incorporate cities, towns and villages by special act, the legislature may by such an act provide for the incorporation of a sanitary district, with powers of taxation, which has no regard for existing boundaries of previously created municipalities. Such a construction enables the legislature practically to take out of the control of the districts which have been incorporated prior to the passage of the constitution, the management of all those matters which may be put under the rather vague term "sanitary affairs," many of which are somewhat local in character. This opens the way for an almost complete nullification of the constitutional provision.[1]

The only court which has clearly seized the distinction between corporate and governmental powers would seem to be that of Ohio. In this state the conferring of corporate powers by special act is not permitted by the constitution. But the court has held that it was perfectly proper for the legislature to provide by special act for the appointment of a board of police commissioners in a city, on the ground that the board upon which the powers were conferred was not a corporation, and that therefore the statute, though special, was not unconstitutional.[2]

Notwithstanding the general failure to discriminate between municipal and purely governmental affairs, it may, perhaps, be well to consider the decisions which have held unconstitutional special acts interfering with internal affairs of various districts. In the first place it has been decided that the legislature may not provide a general system of administrative organization for

[1] Wilson *vs.* Board of Trustees, decided in Illinois and reported in 27 North-Eastern Reporter, 203. See also People *vs.* Draper, 15 N.Y., 532; Metropolitan Health Board *vs.* Heister, 37 N.Y., 661; People *vs.* Pinckney, 32 N.Y., 397.

[2] See State *vs.* Covington, 29 Ohio State, 111, approved in State *vs.* Baughman, 39 Ohio State, 455. This case seems to be cited with approval also in the case of State *vs.* Constantine, 42 Ohio State, 437.

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a particular county. Such an act is held to regulate its internal affairs.[1] It is improper also by special act to extend the boundaries of a particular city.[2] Further, it has been generally held that any attempt of the legislature to regulate the duties or salaries of municipal officers, *i.e.*, officers whose duties are in connection with the public works of the city, is forbidden by any of these constitutional provisions.[3]

A number of cases have arisen in the courts of Illinois on the question as to what are corporate officers and corporate powers. The constitution provided that the legislature should not grant power to levy taxes for corporate purposes to other than corporate officers. An act having been passed giving powers of taxation for levee and drainage purposes to a private company, the court said :

> As the object of the constitutional clause was to prevent the legislature from granting the power of local taxation to persons over whom the population to be taxed could exercise no control, it is evident that by the phrase "corporate authorities" must be understood those municipal officers who are either directly elected by the population or appointed in some mode to which they have given their consent.[4]

This case is of value not only in so far as it defines the term "corporate authorities" under the laws of Illinois, but also as it indicates that drainage and sewerage powers are corporate rather than governmental in character. In this state it has also been held that the construction and maintenance of parks is to be regarded as a corporate purpose, that officers for the admin-

[1] Mortland *vs.* Christian, 52 New Jersey Law, 521, 537.

[2] City of Wyandotte *vs.* Wood, 5 Kansas, 603. See also City of Westport *vs.* Kansas City, 103 Missouri, 141, where it was held that when the constitution gives cities power to frame charters for their government consistent with and subject to the constitution and laws of the state, if a charter contains a provision fixing the limits of the city, the legislature may not, by special act, change these limits. But see State *vs.* Warner, 4 Washington, 773, where it was held perfectly proper for the legislature, under such a constitutional provision, to extend the limits of a city, provided that they were not fixed by the charter.

[3] State *vs.* Pugh, 43 Ohio State, 98, 110; McCarthy *vs.* Commonwealth, 110 Pennsylvania State, 243; State *vs.* Simon, 22 Atlantic Reporter, 120.

[4] Harward *vs.* The St. Clair & Monroe Levee & Drainage Co., 51 Illinois, 130.

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istration of parks are corporate authorities, and that, therefore, the legislature could not appoint certain persons as park commissioners and give them the power to purchase and construct parks to be paid for by a municipal corporation. Where the legislature had attempted to do this the courts refused a *mandamus* to force the city of Chicago to issue bonds.[1] A somewhat similar conclusion was reached by the courts of Michigan in what is known as the Detroit Park case.[2]

In this last case Judge Cooley advanced the view that our system of government is based upon a right in different localities to govern themselves, and that an attempt by the legislature to construct city parks without the consent of the city violates this fundamental right, and would, therefore, even in the absence of a specific prohibition, be unconstitutional. The same decision was reached also in the case of People *vs.* Hurlbut.[3] Here the legislature had passed an act to establish a board of public works for the city of Detroit, and had named the members of the board in the act. The court held that the act was unconstitutional, not only on the general ground that the privilege of local self-government was a part of the American system, but also because the constitution of Michigan provided that municipal officers should be elected or appointed in such manner as the legislature might direct. It was held that this provision, taken together with other provisions of the constitution, assumed that such municipal officers were to be elected or appointed by the people or the authorities of the municipality, and that the legislature had no right to assume control over the appointment of officers who, like commissioners of city works, were purely local in character. In Ohio, however,[4] a general act which gave the governor power to appoint boards of public works in cities was held to be perfectly constitutional; and in Massachusetts the view is repudiated that, in the absence of special constitutional provisions, the Ameri-

[1] People *vs.* the Mayor, *etc.*, of Chicago, 51 Illinois, 17.
[2] People *vs.* the Detroit Common Council, 28 Michigan, 228.
[3] 24 Michigan, 44. [4] State *vs.* Smith, 44 Ohio State, 348.

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can system is based upon the local self-government idea.[1] Finally, this right of home rule is not recognized even in such states as California, where certain cities have the right to frame their own charters subject to general laws. There it has been held that a general law passed subsequent to the charter will supersede the charter. This has been held both as to police courts and as to local assessments.[2]

The constitutional restrictions under consideration have been construed as preventing the legislature from providing by special act for the issue of bonds to build public buildings in counties;[3] for the establishment of a reform school;[4] or for a system of taxation and local assessment.[5] A somewhat similar conclusion has been reached in California. The constitution of this state provides

> that it shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrain their powers of taxation and assessment; [and] that each county, town, city and incorporated village shall make provision for the support of its own officers, subject to such restrictions and regulations as the legislature may prescribe.

The court held, on the basis of these provisions and of the general principles of American local self-government which were declared to be embodied in these provisions and in the constitution as a whole, that the legislature could not order an improvement of a local character to be made in the city and levy an assessment to pay for it.[6]

In the absence of constitutional limitations on the legislature its power has been recognized as including all such acts as have been mentioned, even without the consent of the

[1] Commonwealth *vs.* Plaisted, 148 Massachusetts, 375.

[2] Thomson *vs.* Ashworth, 73 Cal., 73; People *vs.* Henshaw, 76 Cal., 436; *ex parte* Ah You, 82 Cal., 339; Davies *vs.* Los Angeles, 86 Cal. 37.

[3] Devine *vs.* Cook County, 84 Illinois, 590.

[4] State *vs.* County Court of Jackson County, 89 Missouri, 237.

[5] State *vs.* Philbrick, 15 Atlantic Reporter, 579; Gilmore *vs.* Norton, 10 Kansas, 491, 503. See also Atchison *vs.* Bartholow, 4 Kansas, 124.

[6] See People *vs.* Lynch, 51 California, 15, and Schumacher *vs.* Toberman, 56 California, 508.

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municipal corporation. Thus it may force a city to expend money and even incur indebtedness to erect public buildings,[1] to construct a bridge,[2] and to pay private claims not legally binding.[3]

The question, what is a municipal, as distinguished from a central or state officer, has also arisen. It must be confessed that the cases upon this point are not very satisfactory, nor are they very numerous, except where police officers are concerned. It has, however, been held in Missouri[4] that the mayor is a municipal officer. Further, as has already been pointed out, the courts of Illinois or Michigan have held that drainage, levee and park officers and officers for municipal public works are municipal or corporate officers.[5] As to police officers the decisions are conflicting. The courts of Michigan, Massachusetts, Nebraska, Kansas and Maryland hold that they are state and not local officers;[6] the courts of Kentucky and New York hold that they are local and municipal officers.[7] It is only fair to the courts of New York to say, that when the legislature undertook to form several existing municipal corporations into large districts for police administration in its various branches, such as the preservation of the peace and the care of the public health and safety, it was held that the constitutional provision which assured to cities the right to elect their own officers did not prevent the legislature from providing for the appointment by the governor of the officers placed at the head of the new districts.[8] In the case of Astor *vs.* The Mayor[9] the court went still further, and held that the legis-

[1] Perkins *vs.* Slack, 86 Pa. St., 382 (Philadelphia City Hall case).

[2] Philadelphia *vs.* Field, 58 Pa. St., 320; Pumphrey *vs.* Baltimore, 47 Md., 145.

[3] Guilford *vs.* Supervisors, 13 N.Y. 143; Mayor, *etc.*, of New York *vs.* Tenth National Bank, 111 N.Y., 446; Brewster *vs.* Syracuse, 19 N.Y., 116.

[4] Britton *vs.* Streber, 62 Missouri, 370.

[5] *Supra*, p. 13.

[6] People *vs.* Mahaney, 13 Michigan, 481; Commonwealth *vs.* Plaisted, 148 Massachusetts, 374; State *vs.* Seavey, 22 Nebraska, 454; State *vs.* Hunter, 38 Kansas, 578; and People *vs.* Mayor, 15 Maryland, 376.

[7] Shad *vs.* Crawford, 3 Metcalfe, Kentucky, 207; People *vs.* Albertson, 55 N.Y., 50. See also Evansville *vs.* The State, 118 Indiana, 426; State *vs.* Denny, *ibid.*, 382.

[8] People *vs.* Draper, 15 N.Y., 532; Metropolitan Health Board *vs.* Heister, 37 N.Y., 661; People *vs.* Pinckney, 32 N.Y., 397.

[9] 66 N.Y., 567.

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lature might confer local-assessment powers, which had theretofore been exercised by the common council, upon commissioners of parks who had been appointed by the governor and the senate. This would seem to indicate that the legislature might take the management of city parks also into its own control.

This review of the decisions of the courts in construction of the constitutional provisions intended to insure to municipal corporations a greater freedom from legislative interference, cannot fail to impress us with the feeling that these provisions have not fulfilled the expectations of those who advocated their passage. The courts have, indeed, given a very wide meaning to the term municipal or local or internal affairs, including within it many matters which, in other branches of the law, are regarded as governmental and not corporate in character — as affecting the state as a whole, rather than a locality. But the term special act has been so narrowly defined as actually to permit the legislature, at almost any time that it may see fit, to frame a law that will apply to only one of the cities within the state, and yet will be perfectly constitutional. It may be logical to distinguish, as the courts have done, between an act which has merely temporary application, and which, if special, will be unconstitutional, and an act which is passed for all time, which may thus eventually be applicable to all of a class, and which is therefore constitutional even if at the time of its passage it affects only one city ; but such a distinction certainly renders the constitutional provisions almost futile for any purpose of securing to municipal corporations immunity from special legislative action.

We can hardly blame the courts, however, for their interpretation of these constitutional provisions. For we must admit that classification of cities is permitted under such provisions. As Judge Paxson points out,[1] if the classification of cities is not regarded as constitutional, certain cities will be deprived of all means of development. But when we once admit that

[1] Wheeler *vs.* Philadelphia, 77 Penn. State, 338.

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classification of cities is proper, the logical result must be that which the courts have reached. The truth is, this device for insuring to municipal corporations that power to govern themselves which is everywhere regarded as extremely necessary, is not elastic enough under our system of enumeration and strict construction of municipal powers. No general law that has to descend into details can apply with advantage to all the cities within the scope of its operation. It is clearly impossible, in a state where the geographical conditions vary widely in different parts, to pass a general law which, even at any given time, will permit all the cities to make the best use of their powers. Much more evident, when we consider the changes of economic and social conditions under our present rapidly advancing civilization, is the impossibility of framing any general law touching details of municipal life, for application to the future as well as to the present. On this account, even in some of the states which have constitutional clauses for ensuring home rule, we hear from time to time the demand for a return to the old method of special charters and special and local legislation. Such a demand was made only a few years ago in New Jersey. When we remember how little effect the constitutional provisions forbidding special legislation have had, the demand for a return to unlimited special legislation is strong evidence of the impracticability of the present system. The Missouri method, which has been adopted also in California and Washington, is little better than the more common one. For here, while the right of framing their own charters is secured to certain cities, general laws may modify the charters adopted, and general laws may be very special in their application.

These considerations are not, however, the only ones which militate against such methods of regulating municipal affairs. The fact that in this country during the last century the municipality has become of great importance as an agent of the state government, makes it absolutely necessary that the latter shall have a large measure of control over the former. Were the municipality now what it was in its early history, merely an

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organization for the satisfaction of local needs, this control would not be so necessary; but under present conditions its existence and its frequent exercise are indispensable to the proper and uniform administration of many matters which are usually attended to by municipal officers. The great difficulty which the courts have had in distinguishing municipal from public or governmental affairs, makes it extremely hazardous to tie the hands of the legislature, which is in our system the only guardian of uniform administration. If the legislature is deprived of its control, business of a really general character may be variously conducted in different parts of the state, with a resulting lack of uniformity and an unequal distribution of the burdens of the people; or it may be attended to inadequately by the officers of some particular municipal corporation, with disastrous effect to the people of the state at large, as, *e.g.*, in the case of the public health. These dangers, it must be conceded, are very largely avoided by the narrow definition which the courts have given to the term special act; but it must also be admitted that in avoiding these dangers the courts have, at the same time, almost nullified the constitutional provisions which they were called upon to interpret, and have left the municipality, almost as much as before the adoption of these provisions, at the mercy of the legislature.

Thus, from whatever point of view we regard the matter, we are forced to the conclusion that the now usual methods of providing for municipal home rule are not proper for the United States. It was undoubtedly this conclusion which forced the recent constitutional convention of the State of New York to abandon them all, and to incorporate into the new constitution which was adopted last November a provision which is quite novel in American constitutional law, — a provision framed in such a way as both to avoid the possibility of its complete nullification by the courts through their power of interpretation, and also to afford an elastic and adaptable method of regulating the relations of the legislature to municipal corporations. The new constitution distinctly defines special acts relative to cities. It provides that all cities shall be

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classified according to population, the first class including those having a population of 250,000 or more, the second class, those with a population of 50,000 and less than 250,000, and the third class embracing all other cities. It goes on then to say:

> Laws relating to the property, affairs or government of cities and the several departments thereof, are divided into general and special city laws. General city laws are those that relate to all the cities of one or more classes. Special city laws are those which relate to a single city or to less than all the cities of a class.

But the constitution does not take the further and dangerous step of prohibiting special legislation. It provides merely that a copy of every special city bill shall be immediately transmitted to the mayor of each city affected by it, and that either the mayor or the mayor and council of the city concurrently shall, after a public hearing, signify either approval or disapproval of the particular bill. In case of disapproval the bill may not become a law until it has been reënacted by the legislature; and in all cases it is subject, like other bills, to the action of the governor. The constitution further provides that the bill must be acted upon by any city affected by it within fifteen days after receipt of a copy thereof by the city officials, and failure of a city to take action is to be regarded as a disapproval of the bill. Finally it is provided that in all cases special city laws shall, after they have been finally passed, have added to their title "accepted by the city" or "passed without the acceptance of the city," as the case may be.

While this method of limiting the power of the legislature over cities does not, of course, ensure to the cities an absolute immunity from legislative control over purely local matters, it corrects the most serious evil of the old system of special and local legislation. This was that many city bills were rushed through the legislature without the knowledge of the officers of the city or without the knowledge of the people of the city who might be affected by the laws. Now, however, the consti-

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tution specifically requires the legislature to give public notice and an opportunity for a public hearing concerning any such bill in every city to which it relates.

The New York method does not, it is true, provide the same securities for good legislation as are to be found in the English method of special legislation. There, all local legislation is hedged about with so many formalities by the standing orders of Parliament, and must conform in so many respects to the provisions of certain laws known as "clauses acts," that it is not an easy matter to get it through Parliament, and when passed, it is seldom of an objectionable character. But we have every reason to hope that the new constitution of New York has offered an adequate remedy for one of the greatest evils in our system of regulating municipal corporations. If we may in the future obtain an equally satisfactory solution of the problem of concentrating official responsibility, and if we may see a greater interest in municipal politics developed as a result of the greater privileges of home rule which we have obtained, we may hope that our cities will be much better governed than they have been in the past. Without the development of such an interest, however, little improvement can be hoped for. No mere change in legislation can be expected to do much for us. No system of government, however well devised, can be satisfactorily administered unless the people, upon whom the responsibility finally rests, regard the government as their own. But the indifference which has been too evident in many of our large municipalities has undoubtedly been in part due to the feeling of the people that their efforts were of little avail. So much of interest to the city of New York, for example, has been attended to at Albany rather than in the city itself, that the citizens might well be excused for failing to come forward, knowing that their efforts could be at any time, and as a matter of fact had in the past often been, frustrated by the legislature.

FRANK J. GOODNOW.

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THE HOUSING OF THE WORKING CLASSES IN LONDON.

IN London nearly one hundred thousand people are now housed in dwellings built as a result of the movement which was started in June, 1844, by the Metropolitan Association for Improving the Dwellings of the Industrial Classes. In explaining how this immense result has been brought about, I shall endeavor to show what Parliament and the state departments have done; what has been done by the municipal authorities; what has been accomplished by corporations working on commercial principles; what has been done by corporations organized partly on a philanthropic and partly on a commercial basis; what classes have been reached by the work; and what has been done by associated effort seeking to improve the home surroundings of people whom moral rather than financial poverty places outside the scope of the other organizations.

I.

Parliamentary and municipal aid to schemes for improving the dwellings of the working classes in London date from a much later period than the organization of the Metropolitan Association. It seems most expedient, however, to deal at the outset with the action of the legislature and the municipalities. These bodies have had a large and important share in the work, and the immense development of the movement in the last twenty years will be better understood if their action is borne in mind.

In this development of the municipal spirit, as in the purchase and operation of gas and water works, provincial municipalities led the way. Liverpool began demolishing rookeries as far back as 1864, and in 1866 Glasgow commenced similar work, under Parliamentary powers which also enabled the city

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to erect and maintain houses specially adapted for the laboring classes. The acts of Parliament for Liverpool and Glasgow were special to these cities. In 1868, an act, general in its scope and applicable to London as well as to the provincial municipalities, was passed by Parliament. It was a private member's bill, carried through the House of Commons after much hard work by the late Mr. McCullagh Torrens, and was intended to help forward work like that which Liverpool was carrying out under its act of 1864. Under the Torrens Act the parochial authorities in London were empowered to demolish any building which their medical officers reported as being in a sanitary condition that was dangerous to health, and consequently as unfit for habitation. No provision was made in the law for compensation to owners, and as a result of this omission as well as in consequence of the peculiarly parochial character of London vestry politics, the act of 1868 had no effect in helping forward the movement for better working-class dwellings. No one can recall a case in which a vestry acted under the measure of 1868 to the extent of pulling down a block of unsanitary buildings. Usually, after the medical officer had reported, the dwellings were given an internal coat of whitewash and there the matter ended. In 1879 the Torrens Act was amended, making it possible for a vestry to vote compensation; but even then vestries did not avail themselves of the measure. To do so involved charges which would have fallen upon the householders in the vestry areas and added to the burden of local taxes, and the members of the vestries conceived that charges like these should be borne by the whole of London, and not by the people in the particular local-government area in which the unsanitary property was situated.

Although there was thus legislation for London as early as 1868, it was not until the Artizans' and Workmen's Dwellings Act of 1875 was passed and was put into operation by the Metropolitan Board of Works, the then existing central governing authority for the whole of London, that the movement of 1844, now no longer confined to one association, but shared in

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by half a dozen, received any aid either from Parliament or from the bodies responsible for the local government of London. The great effect of the legislation of 1875 was the help it gave to the various associations in securing sites well adapted for their purposes on advantageous terms. Up to this time these associations, notwithstanding their semi-public character, had gone into the real estate market and acquired land on the same terms as the ordinary buyer. When the Metropolitan Board of Works about 1878 began to avail itself of the provisions of the act of 1875, and of a Metropolitan Improvement Act passed in 1877, greatly improved opportunities were offered to the various workmen's-dwellings companies; and for the next twelve years there was more building on the part of the three principal corporations — the Metropolitan Association, the Improved Industrial Dwellings Company, and the Peabody Trustees — than there had been in the entire period since 1844.

The Metropolitan Board of Works during this period was busy with the improvements which have now wholly transformed great areas of central London, giving to the metropolis Shaftesbury Avenue, Charing Cross Road, Roseberry Avenue and new Gray's Inn Road, in place of the narrow thoroughfares and the numberless courts and alleys which formerly existed in these parts of the west-central district. The legislation of 1875 and 1877 empowered the Metropolitan Board to carry out these great undertakings, to clear away the rookeries, and to open out the districts these rookeries covered with magnificent thoroughfares in keeping with the character and modern needs of the metropolis. This legislation further provided that in making these improvements the board should not permanently displace any of the working classes living in the cleared areas. The law was explicit on this point. It set out that the board should

> provide for the accommodation of at least as many persons of the working class as may be displaced in the area with respect to which the scheme is proposed, in suitable dwellings, which, unless there are

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special reasons to the contrary, shall be situated in the limits of the same area or the vicinity thereof.

The board was permitted to clear the sites and lay out new streets across them, graded and sewered; but it could not build and permanently keep in its possession the dwellings to be erected thereon. What it could do was to "engage with any body of trustees, society or persons to carry the whole or any part of such scheme into effect" upon such terms as it might think expedient. The board bought the land and buildings to be cleared on the best terms it could make with the owners, tore down the old structures, and then sold the sites, or such of them as were necessary for carrying out the workmen's dwellings part of the scheme, to persons or associations who were willing to build the dwellings and permanently maintain them for the purposes for which the land was sold. These conditions were carefully set out in the agreements, and any failure to comply with them would result in the reversion of the sites and buildings to the board. All the sites had to be sold within five years of the date of clearing.

These conditions, of course, told adversely on the prices offered for the land coming within the operation of these improvement schemes. The board seldom obtained more than one-third of the market value of the land. There were thus large differences between the prices paid for the land with the rookeries on it and the prices obtained for the cleared land from the builders of dwellings for the working classes. Some of this loss was made up by the increased value of the frontages; the balance was debited to the particular improvement for which the land was cleared, and became a charge on the general local taxes of the metropolis.

The existence of these provisions in the acts of 1875 and 1877, due to the care Parliament had taken that the working classes should not be displaced and permanently incommoded by the great metropolitan improvements, gave a tremendous impetus to the building of workmen's dwellings between 1878 and 1888. The workmen's-dwellings companies were some-

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times building on as many as half-a-dozen cleared areas in a single year during this period. The activity of the Peabody Trustees, for instance, may be judged by the fact that between 1878 and 1884 the number of separate dwellings in their blocks jumped up from 2,348, accommodating 9,860 people, to 4,359, accommodating 18,000 people. The building operations of the Peabody Trust during this period far out-ran their available capital, which was augmented by a loan of nearly £400,000, advanced at a low rate of interest by the Public Works Loan Commissioners. These commissioners form a subdepartment of the imperial treasury, and their function is to obtain loans for works carried out by municipalities and other public bodies. They are able to obtain loans at less than three per cent, and they re-advance them for carrying out public works at a rate seldom exceeding three and a half per cent. In this way both the Peabody Trustees and the Improved Dwellings Company were brought into contact with the imperial government, and thus in their schemes received substantial help from the government, as well as from local governing bodies of the metropolis.

II.

Although the fiftieth annual report of the Metropolitan Association was issued to a meeting of shareholders held on the 21st of June, 1894, the work of organizing the association began not in 1844 but in 1841. In the autumn of that year, at a meeting presided over by the then rector of Spitalfields, it was decided that an association should be formed "for the purpose of providing the laboring man with an increase of the comforts and conveniences of life, with full compensation to the capitalist"; that the first object of the association be "to erect, rent or purchase suitable buildings, to be let in compartments at a moderate weekly rent"; that the second object be "to erect, rent or purchase dormitories for the reception of nightly lodgers"; and the third, "to erect, rent or purchase small tenements for families to be let at a moderate weekly rent."

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Notwithstanding the fact that this scheme offered "full compensation to the capitalist," capital was subscribed but slowly; and the first annual meeting of shareholders was not held until March, 1846. It was then clearly set out that the plan of the association did not involve any attempt to assist the poor by offering them any gift or by doing anything for them in the shape of charity. Such attempts, it was urged, were always too limited and too transient really to benefit the recipients, while they had a tendency to injure and corrupt the poor by lessening their self-reliance and destroying their self-respect. Nor did the pioneers of this great movement "imagine that it would be possible for any private body of men to provide suitable habitations for all the poor, even of the metropolis."

They thought, however, that

> it might be practicable, by the combination of capital, science and skill, to erect more healthy and more convenient houses for the laborer and the artizan, and to offer such improved dwellings to these and similar classes at no higher rent than they paid for the inferior and unhealthy houses which they at present occupy.

They thought, moreover, that

> if it were practicable to present some examples of houses well built, well drained and well supplied with air, water and light, and to offer these dwellings at no greater charge than is at present demanded and obtained for houses in which no provision whatever is made or even attempted for the supply of any of these essential requisites of health, cleanliness and comfort, a public service would be rendered beyond the mere erection of so many better constructed houses; that the influence of this example could scarcely fail to be beneficial; that especially it might help to render it no longer easy for the landlord to obtain an amount of rent for houses of the latter description which ought to suffice for those of the former, and that it might thus indirectly tend to raise the general standard of accommodation and comfort required in all houses of this class.

In short, the proposal of the association was that the industrious man should pay the full value of his house; but that for the sum he paid

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he should possess a salubrious and commodious dwelling, instead of one in which cleanliness and comfort can find no place; in which he can neither maintain his own strength, nor bring up his family in health, but must constantly spend a large portion of his hard-earned wages in the relief of sickness.

The charter of incorporation limited the dividends to five per cent. From the outset, however, the directors of the Metropolitan Association have possessed what Dr. Vaughan, the Roman Catholic Archbishop of Westminster, once aptly described as "the happy knack of uniting, in very close bonds, love of their neighbors and five per cent." Four and a half per cent was the actual dividend paid on the capital of the company in its earlier years; but for twenty years past the dividends have been at the maximum rate allowed by the charter.

The first building erected by the Metropolitan Association, and consequently the first of its kind in London, can be seen by the traveler who is entering London by the Midland Railway. It stands within a quarter of a mile of St. Pancras Station, on the right hand side of the line, opposite the Old Churchyard of St. Pancras. This site was leased for a period of ninety-nine years, at a rental of ninety pounds a year; and on it was built a block of dwellings of five floors containing accommodation for 110 families. It comprises twenty sets of two-roomed, and ninety sets of three-roomed tenements. The rooms are so contrived that ample light is secured to each, while the dwellings are kept quite distinct and independent of one another. Each dwelling is provided with a supply of water drawn from a cistern, filled from the mains night and morning (formerly the common method in London houses) and also with the means of carrying off ashes and refuse through a shaft accessible from the scullery. In dwellings where there are two bedrooms, each bedroom has a separate entrance from the sitting room, and the larger bedroom has a fireplace. The living rooms are furnished with a range, hot-water boiler and oven. Under the slate slopstone in each scullery is a galvanized iron coal-box. Londoners buy their coals in bags, a method of delivery long prescribed by law,

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so that it is an easy matter, and one involving little dust, to shoot the coals into the bins under the sinks. In each scullery also there is a meat safe fixed against an external wall in which an air brick is placed. In every respect the dwellings are quite self-contained, the tenants sharing nothing in common but the halls and stairways, the asphalted courtyard in front and the drying ground in the rear.

All the St. Pancras dwellings were soon rented; and from 1846 to 1874 the Metropolitan Association embarked on eleven other undertakings, including seven dwelling blocks and four sets of cottages — one set in Beckenham in Kent, and three at the East End. Between 1874 and 1894 only two additional dwelling blocks were erected. Of late years the association has devoted its available capital to renovating and improving the dwellings erected in the earlier period of its activity, and for the present its building account is closed. It has now provided accommodation for about 6500 people, of whom some 1600 are housed in its cottages. Its total expenditure up to the end of March, 1894, was £275,300. Its largest expenditure was on the well known Farringdon Street building, which comprises 253 tenements and ten shops. The capital outlay on this building was £42,300. The Farringdon Street building is splendidly situated from the point of view of a workman's-dwellings company. It stands on high ground, within twenty minutes' walk of either the Bank or Oxford Circus, and in years when special expenditure has not been necessary, has never returned the company a profit of less than five and three-quarters per cent. In some years the profit has been as high as six per cent. The Farringdon Street and St. Pancras buildings pay best of all the association's enterprises. Labor and materials were very much cheaper in the forties than nowadays, as is shown by the fact that while the St. Pancras block cost £43 a room, the cost of the Farringdon Street building, erected in 1874, was at the rate of £48 10*s.* a room. The ground rent in Farringdon Street is one shilling and a farthing a week per dwelling, as against threepence three farthings per dwelling in the pioneer building at St. Pancras.

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As regards the scope of its operations, the Metropolitan Association differs from any of the companies and building trusts which have followed it. The Improved Dwellings Company and the Peabody Trustees have confined themselves to the erection of great buildings in the crowded parts of London. The Metropolitan Association, while it has ten such buildings, accommodating in the aggregate 1,386 families, has also experimented with cottage dwellings in the outlying districts; with a great lodging house for single men; and in a way with partly furnished single-roomed dwellings. It has succeeded with the cottages; but the lodging house and the single-roomed dwellings were abandoned long ago. These latter experiments the company now admits were attended with failure.

The lodging house for single men was tried as early as 1849, and was the second or third enterprise on which the company embarked. A sum of £13,000 was expended on a building in Albert Street, Spitalfields, which provided accommodation for 234 single men. The lodging house was maintained for eighteen years; during this time it never by the most careful management returned a profit of one per cent,[1] and so the directors abandoned this part of the association's original scheme, and expended another sum of £4,700 in converting the building into dwellings like those at St. Pancras. The Albert Street building now provides accommodation for forty-six families, comprising some 220 people, and for many years past has returned a profit seldom falling below three and a half per cent.

The experiment with single-roomed dwellings was made at a much later period, and was in the nature of a speculation by the late Sir Ralph Howard, M.P., who since the organization

[1] The London County Council has recently erected a municipal lodging-house, concerning which Mr. John Burns has said to Dr. C. B. Spahr, of *The Outlook:* "When we built our magnificent municipal lodging-house, we found that the proposed fivepence charge did not cover expenses and pay three per cent on the bonds. We at once raised the charge to sixpence, and since that have been paying expenses and five per cent. This building, it is true, is not reaching the class for whom it was intended, but it is paying for itself; and we propose to build more which shall reach the lower class."

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of the association in 1844 had been its chairman. In 1871 he built a house containing sixteen large single rooms, with washing tubs and clothes boilers and a supply of water arranged for each floor. Each room was furnished with two iron bedsteads and a curtain to divide them, and two berths for children, arranged as on board ship, were constructed at the side of the fireplace. But nobody seemed to want a home of this description. When applicants for house accommodation were directed to these single partly-furnished rooms, they declared that they wanted two rooms ; and none of them seemed pleased with the iron bedsteads, the curtains and the ship berths. They had their own furniture, and had no use for these fixtures belonging to the landlord. The house stood almost empty for a year, when the bedsteads were sent as a gift to a hospital, and the building was converted into one of two-roomed dwellings.[1]

Between the Metropolitan Association and its tenants there have never been any relations except those of landlord and tenant. The association has always selected its tenants with great care, and if an undesirable tenant has crept in, he has been speedily got rid of. Rents vary from two and sixpence to nine shillings and sixpence a week, according to the number and location of the rooms. Tenements on the ground floor usually bring sixpence a week less rent than those on the floors above, as being less quiet, less private, and more exposed to breakage of windows, the repairing of broken windows being a charge which falls upon the tenant. Rents are collected weekly in advance. No arrears are allowed.

The mortality in the buildings of the Metropolitan Association has always been lower than that of the metropolis generally. For eight years prior to 1875, when the general rate of the metropolis was twenty-four per thousand, the rate in the association buildings was sixteen per thousand. For 1893 it was 15.37 in the dwellings and 21.3 for the metropolis generally. There has been a similar disparity between the rates of

[1] The Improved Dwellings Company made an experiment similar to that of Sir Ralph Howard by fitting up a number of one-roomed dwellings in one of their buildings. Here also the experiment was a failure.

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mortality in all the buildings of the improved-dwellings corporations and the rate of the metropolis at large. This can be best accounted for by the great care that is taken of the sanitary arrangements of the buildings, and by the fact that the pick of the working classes resident in the more thickly populated areas of London, is to be found in these buildings. Care is taken to keep out the indolent, the drunken and the improvident. Rigor in enforcing the prompt payment of rent quickly weeds out such people. All the dwellings corporations, even those on semi-philanthropic lines, insist that it is no charity to allow a family to run behind in its rent.

III.

"From health contentment springs" is the motto of the Improved Industrial Dwellings Company, which was organized in 1863, nearly twenty years after the Metropolitan Association commenced its work. Like the Metropolitan Association, the Improved Dwellings Company was organized on a strictly commercial basis. It is now paying its shareholders five per cent, and they have been receiving this dividend almost from the time that their first properties became filled with tenants. This company was the outcome of an experiment in building houses for the working classes made by Sir Sidney Waterlow in 1861. He built blocks in Finsbury for the accommodation of ninety families, and the result from these experimental buildings was so encouraging, both financially and socially, that at his instance a few wealthy and philanthropic men met at the Mansion House and established the Improved Industrial Dwellings Company. These gentlemen subscribed the first capital of £50,000, and elected the Earl of Derby, then Lord Stanley, chairman. The work the new company was entering upon was philanthropic in its character and aims; but that fact was to be subordinated, at least in the ordinary sense of the word philanthropy, to the conviction that "the independence of the tenants could not be maintained, or the necessary funds secured for the work, unless a fair dividend could be paid on the capital subscribed." The

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tenants were to be in no sense the recipients of charity. They were simply to enjoy complete, comfortable and healthy homes, in good and convenient locations, for about the same rent that they would have to pay for two or three rooms in ill-adapted and unsanitary houses in inferior situations. The new company, best known in London as the Waterlow Company, commenced work at once, and by June, 1864, had built Cobden Building in Kings Cross Road, only a little way from the building with which the Metropolitan Association commenced its work.

The dwellings constructed by the Waterlow Company are in nearly every case self-contained, each tenant enjoying separate domestic conveniences. In a few instances, where economy of space and outlay was sought, the dwellings were so arranged that two or more tenants had the use of conveniences in common; but the experiment of building in this way was not a success. Rents for these dwellings were in proportion to the diminished cost of construction; but cheapness did not recommend them to the working classes. The thirty years' experience of the Waterlow Company has made it clear that tenants will gladly pay higher rents for the exclusive use of domestic offices; and long ago the directors came to the conclusion

> that the working classes desire homes which shall be constructed to meet the requirements of English family life, and the occupation of which shall not engender a feeling of dependence; but shall rather stimulate self-reliance by the consciousness that a fair market price is paid for the comforts enjoyed.

The capital with which the Waterlow Company began work in the early sixties was quickly increased; and later on, in the period of building activity which followed upon the improvements carried out under the acts of 1875 and 1877, the company obtained large loans from the Public Works Loan Commissioners. In 1884, when the company had been in existence for twenty-one years, it had completed thirty-one buildings, providing 4,314 dwellings, with accommodation for 21,486 people, and had in course of erection four other buildings containing 665 dwellings, with accommodation for 3,382 people.

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The company was also managing 153 improved dwellings erected by private owners. This is a department of the company's work which has been extended since that time, and which is likely to continue extending long after the company has finished building on its own account. One principal reason for this extension is that whenever a railway company demolishes houses, the act of Parliament under which the demolition takes place calls upon the company to erect workmen's dwellings for nearly as many people as are temporarily displaced by the clearances. Thus the Midland Railway Company is now the owner of a large number of improved dwellings in the neighborhood of St. Pancras, built under these conditions; and the number of dwellings so built will be largely increased during the next five years by the entry of the Manchester and Sheffield Railway Company into London. After long waiting, the Manchester and Sheffield undertaking has at last obtained a Parliamentary right of way into the metropolis. It will come in by way of St. John's Wood. The making of the new line will render necessary large clearances in the northwestern district of London, and the workmen's houses that are demolished will have to be replaced by improved dwellings, the management of which will come under the control of the Waterlow Company.

The capital account of this company was closed in 1892, with the completion of the Moore Blocks, on the Duke of Westminster's estate, between Grosvenor Square and Oxford Street. No great building operations have been entered upon since that time. The Moore Building added forty tenements to the company's rent roll, bringing up the total number of improved dwellings under its control to 6,123, giving accommodation for 31,000 people.

In the course of its thirty years' operations, and in the expenditure of a capital sum amounting to £1,109,892, the Waterlow Company has been brought into contact with the Public Works Loan Commissioners, with the Metropolitan Board of Works, from which it purchased a large number of sites, with the Ecclesiastical Commissioners, who manage the real estate of the Church of England, with the Duke of Westminster, the Marquis

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of Northampton, the Baroness Burdett-Coutts, and other of the large ground landlords of London. Among private owners the largest number of sites was obtained from the Duke of Westminster, and on easy and liberal terms. But whether building on land obtained from the Board of Works, and cleared for metropolitan improvements, or on land of private owners cleared to make way for modern dwellings, the mode of procedure of the Waterlow Company has been the same. The improvements have been carried out in sections, and it has been the rule that a new block of buildings should be ready for occupation before the clearing of another area was commenced. Some of the works were carried out in as many as six sections. When weekly tenants have been compulsorily removed for these clearances, compensation for disturbance, usually amounting to about one month's rent, has been granted them. The tenants thus disturbed were usually given a preference when letting commenced in the new buildings. In comparatively few cases, however, have they found their way back into the new buildings.

The relations between the Waterlow Company and its tenants are similar to those already described as existing between the Metropolitan Association and its tenants. Neither company asks a tenant any questions as to his income. An applicant for a dwelling under the Waterlow Company must furnish a reference from his employer, and a certificate from his previous landlord that he has regularly paid his rent. He must also give particulars as to his domestic condition, state whether married or a widower, and how many children over twenty years of age, between twenty and twelve years, and under twelve years are to live with him. The company will permit no overcrowding; and if a man cannot afford a tenement with sufficient rooms to accommodate his family, in accordance with the standard set up by the company's rules, he must look elsewhere for a house. Four children under twelve, with a man and his wife, may go into a two-roomed tenement; a man and wife with six children must take three rooms.

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IV.

The Peabody Trustees commenced their work about the same time as the Waterlow Company, and at first the two undertakings were under the same chairman. After the Waterlow Company had been in existence for two or three years, however, Lord Derby resigned the chairmanship and devoted himself exclusively to the affairs of the Peabody Trust. The Peabody Trust is on an altogether different footing from either the Metropolitan Association or the Waterlow Company. It is not a dividend-making concern. All that the trustees aim at is to secure a return of at least three per cent on the outlays on the buildings, and to use the interest which thus accrues in adding to the estates of the trust. In 1862, when their work commenced, the trustees had a fund in hand amounting to £150,000; but by 1873, after Mr. Peabody's death, they were in possession of £500,000 from the Peabody gifts and bequest, in addition to the sums which had accrued in these eleven years from interest on the moneys invested and from rents of the dwellings which had then been erected. Up to the end of 1893 the trust had expended £1,242,000, including loans of £390,000 from the Public Works Loan Commissioners, and were then in possession of eighteen groups of buildings in various parts of London, comprising 215 blocks with 11,273 rooms, divided into 5,070 dwellings, with 19,937 people in residence. More than 800 of the dwellings are single-roomed tenements; for the Peabody Trust, unlike the Metropolitan Association and the Waterlow Company, has continued the policy of providing tenements of this description.

The average rent per room throughout the Peabody buildings is two shillings and a penny three farthings; the average rent per dwelling, four shillings and ninepence farthing per week; and the average earnings of the heads of families in residence, one pound, three shillings and sevenpence halfpenny per week, as compared with one pound three shillings and a penny in 1873, when the rent per room averaged one shilling and ten-

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pence. In the earlier years, none of the dwellings had more than three rooms. In the more modern Peabody buildings, there are a large number of four-roomed dwellings, and the higher wages of their occupants may account for the higher average of wages throughout the buildings. The more modern buildings also are devoid of the fort-like appearance of those erected in the first twenty years of the trust. These old buildings were anything but inviting in their outward appearance, and looked more like jails than workmen's residences. The example of the Waterlow Company has brought about a change and some of the newer Peabody buildings present quite attractive exteriors. This change has made them much more popular, and has enabled the trust to obtain rents only fractionally lower than those of the organizations which make a fair dividend an essential part of their scheme.

At a number of points the relations of the Peabody Trust with their tenants differ from those of the dividend-earning companies. An applicant for rooms in a Peabody building must state what wages he is earning. If they are over thirty shillings a week, he is in general not accepted as a tenant. No hard and fast rule is made as to this sum, but men with over thirty shillings a week are not of the class to which the trustees desire to give the advantages of the Peabody dwellings. Every tenant must have been vaccinated. No tenant is permitted to take in boarders, or to keep a store of any kind; nor are any of the women permitted to wash clothes other than those of their own families. This last rule is necessary owing to the laundry arrangements. There are laundries and drying rooms in most of the Peabody buildings. In this they differ from the buildings of the Metropolitan Association and the Waterlow Company. Again, wallpaper is in general use in the dwellings of these two associations, while in those of the Peabody Trust, tenants are required to disinfect and whitewash their rooms at least once a year, and must not paper, paint or drive nails into the walls. Neither are the Peabody tenants permitted to keep dogs. They are in fact much more under rule than tenants in the Metropolitan and Waterlow buildings. They are told how

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often and at what time of day passages and steps must be cleaned, and when carpets and mats may be beaten ; they are forbidden to dry clothes out of their windows ; and they are required to report to the resident superintendent births and deaths and cases of infectious disease.

By reason of the fact that exceptionally advantageous terms were granted to the various dwellings corporations in connection with the sale of building sites, and of the fact that the Public Works Loan Commissioners treat them on the same basis as the municipalities, all the companies have come to be regarded as public bodies, and are almost as much subject to criticism as the county council or the school board. This has been especially the case with the Peabody Trust, because of the conditions under which it came into possession of its funds. After the trust had been in existence about seventeen years the trustees undertook to answer some of these criticisms, and in particular the reiterated charge that the buildings were occupied by a different class of people from that for which the late Mr. Peabody intended them.

> It is a sufficient answer to this criticism [said the trustees] to say that the late Mr. Peabody, with whom three of the trustees lived on terms of intimacy and confidence, was fully cognizant of, and was consulted upon, the precise application of the funds bestowed by him, and that four years after the date of his first gift and subsequent to the construction and occupation of the Spitalfields and Islington buildings, he wrote to the trustees: "I cannot but express my grateful thanks for your constant attendance at the meetings of the board, and my gratification at the great success that has attended your labors. The capital will form a fund, the operation of which is intended to be progressive in its usefulness, as applied to the relief of the poor of London, so correctly defined in your recent report."

The report referred to by Mr. Peabody was that for 1865, and, like every succeeding report of the trustees, it contained an analysis of the occupations of the residents in the buildings. In 1865 they included charwomen, monthly nurses, basket makers, butchers, carpenters, firemen, laborers, porters, omnibus drivers, seamstresses, shoemakers, tailors, waiters,

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warehousemen, watch finishers, turners, staymakers, smiths, sawyers, printers, painters, laundresses, letter carriers, artificial-flower makers, dressmakers, carmen, cabinet makers and bookbinders. A census taken at the present time of the inhabitants of the eighteen groups of the Peabody buildings would show people of the same classes which were set out in the report which received Mr. Peabody's endorsement.

V.

The Guinness Trust is the most recent of the corporations engaged in providing dwellings for the working classes. It was founded in 1889, and administers, under a scheme drawn up with the approval of the court of chancery, the gift of £200,000 from Sir E. C. Guinness, now Lord Iveagh, and a later gift of £25,000 from the Goldsmiths' Company of London. For its work in London, the trust began with a capital of £225,000. Out of this sum it has already built blocks of dwellings in Chelsea, Bethnall Green, Clerkenwell, Bermondsey, Walworth and Vauxhall, containing 1,870 tenements. Its general plan is like that of the Peabody Trust, its income going to swell the capital account available for building purposes. So far it has obtained no advantages from either the county council, or the Public Works Loan Commissioners; but its building at Chelsea stands on a site which was given to the trust by Lord Cadogan. Its aim is to reach a lower class than is reached by the Peabody Trust, and to do more for its tenants. Artisans are not eligible as tenants of the Guinness dwellings, which are reserved for people of a much poorer class. The trust will take as poor people as will come; all that the trustees insist upon is cleanliness and order, and regular payment of rent. The trust permits of no arrears, and in its conditions of occupation it has a drastic clause dealing with rent payments. In other respects the Guinness conditions of occupation are similar to those of the Peabody Trust.

The Guinness buildings are of five floors, with a laundry on each floor. Hot and cold baths are also provided, and at

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any time during the day hot water may be obtained free of charge for cooking and cleaning purposes. Window blinds are provided by the trust; chimney cleaning is at its expense; and for each block of dwellings the trust provides a clubroom, furnished with a piano, and supplied with newspapers and other reading matter. All these advantages are peculiar to the Guinness buildings. None of the other building corporations attempt anything in the line of baths or continuous supplies of hot water, although in some of the Peabody buildings reading-rooms have been established.

At the end of 1893 there were 3,245 people in the Guinness buildings, and two other buildings were nearing completion. The average earnings of each family in residence were eighteen shillings and a penny a week. The average rent of each dwelling was three shillings and elevenpence farthing a week, and the average rent of each room two shillings and a penny farthing. The average rent of a room in a Guinness building is thus only one halfpenny a week less than the average rent of the Peabody rooms. The rent of a three-roomed dwelling in a Peabody building ranges from three shillings and sixpence to five shillings and sixpence; in a Guinness building from four shillings to five shillings. The Peabody Trust has no four-roomed tenements rented for less than seven shillings a week; while the Guinness Trust offers a number of four-roomed dwellings at five shillings and sixpence. In addition to this, the Guinness does much more for its tenants than the other dwellings corporations. To poor people who buy their coal in very small quantities and pay for it at something like one shilling and sixpence per hundredweight, the provision of hot water available at any time in the day for either cooking or cleaning can be made to mean a saving of sixpence a week.

The operations of all the dwellings corporations seem to have proved that it is not possible to erect buildings in which rooms of the size common in the London dwellings can be rented at less than an average of two shillings and a penny farthing a week. There is, as has already been shown, only one halfpenny a week difference between a Guinness and a

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Peabody room, and a difference of only a farthing a week between a Peabody and a Waterlow room. Nor is it possible to note any very marked difference in material position between the tenants of the dividend-earning companies and those of the Peabody Trust. An examination of the tenant rolls of the Metropolitan Association and the Waterlow Company shows pretty much the same class of people as those scheduled in the Peabody report for 1865. The directors of the Waterlow Company, like the trustees of the Peabody and Guinness Trusts, give their services, only drawing dividends on their shares like any of the ordinary shareholders. They give considerable time to the work, for the Waterlow Company employs no contractors. For nearly twenty years past its colossal building undertakings have been carried out by the direct employment of labor under the supervision of its own staff. Long before the London county council set the example to London public bodies of doing away with the contractor, the Waterlow Company had successfully tried the experiment.

VI.

One method of dealing with the dwellings of the London working classes remains to be described. It is that adopted for thirty years past by the Marylebone Association, the aim of which is to improve the home surroundings of people whose conditions make it impossible for them to become tenants of any of the other dwellings corporations. As an association, it works in the quietest possible way. No immense blocks of buildings indicate the whereabouts of its activities. Its most active workers are women, best known among whom are Miss Octavia Hill, her sister, Miss Davonport Hill, and Miss Maud Stanley.

There has never been any element of charity in the work of the Marylebone Association. Its methods are widely different from those of the dividend-earning corporations; but it has always kept a five per cent dividend in view, and in most years has made it. The cardinal principle of the association is

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that it is best for both the working classes and the rich and leisured classes that as many as possible of the former should reside in Central London. For many years before the legislation of 1875 and 1877 permitted the pulling down of unsanitary property over large areas, the Marylebone Association was at work in the region of the metropolis from which it takes its name. A sum of about £60,000 was at the disposal of the association, and was used in buying up tumble-down dwellings and renovating them for the occupation of the existing tenants. The first care was to put the drains, the water supply and the roofs in good order, and the next, to set aside a considerable sum for yearly improvements. "I tell the tenants," said Miss Octavia Hill, in explaining her mode of procedure to a recent royal commission,

> what that sum is, and I say "the more careful you are the more comfortable your house will be." I spend that sum and give them an account of it, and it has a most wonderful effect upon them. Steadily and gradually we improve the houses, quarter by quarter, with that sum; but the time comes when the tenants are a good deal raised, and after doing that we often take a bit of the court and rebuild it, because by so doing we can give better accommodation; and we still manage to pay either four or five per cent.

The Marylebone Association holds that there is reformatory as well as sanitary work to be done.

> Our money is invested [said Miss Hill] not so much to construct new dwellings for the people, which is better done by the large societies, but to enable my fellow-workers by personal efforts to reach a lower class than the societies can touch. The great difficulty with these people is not the rentals; it is their destructiveness. My people, when I go among them at first, would destroy anything. They would kick out the door panels and burn the cupboard doors. We get hold of the people in poor houses and then in time build better ones. We succeed in reaching the very lowest class that has a settled residence.

How success has been achieved in this work was further explained in some detail by Miss Hill.

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When I go in and buy a group of houses occupied by a low class, I go round next morning and collect my rents as anybody else would. I get to know a little bit who the tenants are. There are thieves and all sorts of people, and I go into underground rooms and all sorts of horrid places. I get to know these people, and I say: "I do not want this underground room used any more. I have a nice room at the top of the house. Will you not come up?" I do not frighten them, and they are not afraid of what they call "their bits of things" coming among people who would scorn them. I begin with precisely the same rents, because I do not want it to be a charity, and then I usually make a reduction in letting two rooms where they are wanted for the occupation of one family. The people we wish to work with would not go into the new dwellings; many of them would be frightened. They are very shabby, and we only get them clean by degrees.

In dealing with the poorest class what is always wanted, in Miss Hill's opinion, is some element between an official body managing the business and the tenants—an element which shall represent nothing in the way of gifts or charity, but which shall aim entirely at getting the people into better habits; and shall "unite the loving-kindness of the friend with the control of the landlord." Since 1865, Miss Hill and her association in Marylebone have been engaged on this line, and during that period they have brought at least 4,000 people under their influence and taught them to prize and appreciate home surroundings of the kind the association has placed within their reach. Only indirectly have the fifty years' work of the Metropolitan Association and the thirty years' work of the Waterlow and Peabody corporations touched these people. Nor were they reached by the more recently established Guinness Trust, which throws its net a little wider. They would never have been reached had it not been for the unique and real missionary work of the Marylebone Association.

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A NEW STATEMENT OF THE LAW OF POPULATION.

NO doctrine or class of doctrines in political economy has been criticised more severely or opposed more vigorously than what passes current as the law of population. This law is so intimately associated with the name of Malthus that it has become synonymous in the minds of most people with the term Malthusianism. An examination of the various current statements of the law as developed by Malthus in the various editions of his *Essay on Population*, amply justifies many of the criticisms made upon it. At the same time it reveals a singular lack of agreement on the part of so-called Malthusians as to the real basis of the law and as to the proof by which it is to be substantiated. Instead of a single law of population, determined by certain invariable conditions which are universally recognized, it is found that the statement of the law has repeatedly shifted its ground so as to give practically several laws of population; and at the same time the character of the proof advanced has changed to keep pace with the new formulations of the law. So unsatisfactory have many of the stock arguments proved, that nothing short of a restatement, in modified form, of the conditions under which the law is assumed to operate will serve to bring it into harmony with the present tendencies of economic thought. There are several distinct doctrines which lie confused in the discussion of the theory of population, each of which must have its consequences logically developed before the difficulties which now attend the discussion of the law can be cleared away.

The first proof advanced by Malthus depended upon the opposition between population and the food supply. On the one hand, the tendencies to populate being regarded as fixed and definite, there is a rapid increase in the number of the population which brings the members of the human race into

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conflict with one another in their struggle for subsistence. On the other hand the food supply is regarded as limited. Under the influence of the tendency to over-populate, the race is constantly pressing upon the limits set by the production of food, and is always in imminent danger of being reduced to starvation. Such a formulation of the law of population has the great merit of being clear and easily comprehended. Unfortunately the proof of the law so formulated is by no means convincing or even logical; and it is the weak character of the evidence adduced in support of the law that has strengthened its opponents in their opposition.

In the first edition of Malthus's work we see clearly the starting point of this discussion; it is plain that the law was formulated as a result of meditation upon the opposition between population and food supply. Godwin, in his *Political Justice*, had advanced the same doctrine found in Condorcet's *Sketch of the Progress of the Human Mind*, in which is predicted the removal of all social and political evils, and the establishment of peace, virtue and happiness over the whole earth. Godwin attributed nearly all the vices and misery with which society is afflicted to bad government and bad laws. Reform these, he said; do away with all the institutions that minister to oppression, both political and social: and society will naturally mould itself to an ideal state, where the spirit of benevolence, guided by justice, will distribute the bounteous fruits of the earth among all persons according to their several needs. It was such an ideal as this that Malthus wished to combat, and he sought to do it by calling attention to the opposition between the food supply and population, the desire for food and the desire for marriage being treated as two coördinate principles. His method of proof was as follows. In an ideal state the food supply of the whole world would soon be brought into requisition and there would be no possible chance for any further increase; but the condition of the people would cause population to increase more rapidly than it does now, and in this way there would soon be a greater population than the food supply could sustain. Consequently he predicted that at the end of a short

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period, perhaps not more than fifty years, the ideal society would be destroyed through over-population. It should be noticed that this argument has nothing to do with the actual condition of society, past or present. It merely relates to an ideal society; and it must be confessed that this argument against Godwin is complete.

If we substitute for the scheme of Godwin the ideal of society more familiar to us in the present day, the vital point of the controversy can be more clearly seen. Bellamy in his *Looking Backward* has presented to us a scheme of an ideal society in which the present evils, political as well as economic, are avoided, and the highest form of social organization possible for us with our physical limitations is realized. While this scheme differs in many respects from that of Godwin, the points which the two have in common are numerous, and the arguments of Malthus are as pertinent to the one as to the other. Bellamy's scheme would also bring into requisition all the means of subsistence, and the argument of Malthus would have the same force here as against Godwin. In other words, Bellamy provides no means by which to care for any future increase in population after his ideal society has once established itself and all resources are fully utilized.

However cogent the arguments of Malthus may be against such schemes, it is unfortunate that the problem of the physical powers of the earth became confused with the problem of population. The question is not population *versus* the possible means of subsistence, but population *versus* the power in a given society to obtain subsistence. In other words the opposition is between population and its productive power. Useless and confusing also is the discussion of the natural rate of increase and the means by which this natural rate can be measured. The strength of the sexual passion is not a necessary premise in the discussion of the problem, though Malthus thought differently. Malthus was equally unfortunate when he endeavored to demonstrate the natural inequality between the productive powers of nature and of the human species, thus apparently making Providence responsible for the evils result-

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ing from over-population. It is only too evident that when Malthus wrote his first essay he was influenced more by political than by economic considerations, or he would not have contended for the natural inequality of men. Godwin sought to make society responsible for all the evils from which we suffer. This is doubtless an exaggerated view; yet the doctrine of Malthus that all our misery results from natural causes is equally far from the truth.

Before the publication of the second edition of his *Essay*, Malthus had subjected it to a careful revision and had added to it the results of foreign travel and wider reading. The change in the title itself indicated the changed character of the book and the new centre about which the discussion was now to revolve. The first edition was *An Essay on the Principle of Population as it affects the Future Improvement of Society*, thus relating directly to the ideal society which Godwin had in mind; the second edition is *An Essay on the Principle of Population, or a View of its Past and Present Effects on Human Happiness*. The future is no longer prominent; the past and present now come into the foreground. Malthus endeavors to show how in past ages and at the present time the misery and suffering in the world come, not from social and political oppression, but from the tendency to over-populate. The second argument introduced by Malthus depends upon the relative increase of population and of the food supply. Neither population nor the food supply is at its ultimate limit, but the ratio of increase is greater in the one case than in the other: while the food supply is increased by a given increment, population is increased to a still greater degree. Under such conditions, even though the whole food supply of the world is not utilized, there can be no other result than misery and suffering. The opposition now is between the physical qualities of the soil and the physiological qualities of men. The physiological qualities of men lead to a geometrical ratio of increase in population, while the physical qualities of the soil do not allow more than an arithmetical ratio of increase in the supply of food. The force of this argument is to emphasize Malthus's thesis that

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present misery results from the tendency to over-populate. Population is constantly pressing against the means of subsistence, and no relief is possible which does not operate on and through the minds and habits of the people.

There is little justification for John Stuart Mill's attempt, more charitable than wise, to excuse in Malthus what he considered "an unlucky attempt to give numerical precision to things which do not admit of it," — an attempt which was "wholly superfluous to his argument." As a matter of fact this particular argument was the only one that Malthus could at this time bring forward as a basis for his theory. With these definite ratios he was able to establish with respect to the present and past of human society conclusions identical with those concerning the future which he had arrived at by his first argument. Mill probably forgot that economic thought in the time of Malthus had not yet arrived at the formulation of the law of diminishing returns, which was later to modify in more ways than one the current economic doctrines.

It is at this stage of the discussion that a new argument was introduced which gave to the law a broader basis. This third argument depends upon the law of diminishing returns and is a result of the agitation concerning the ground leases of England, becoming prominent about 1815, when Malthus, West and Ricardo began to develop almost simultaneously the theory of rent. When this agitation had brought about its inevitable consequences, there was seen to be an opportunity for a stronger statement of the law of population than had been possible when the whole argument depended upon the difference between arithmetical and geometrical ratios. This new statement is put more clearly by Mill than by any other writer. The food supply has not definite limits, as would be the case in an ideal society; it is rather to be thought of as a quantity gradually increasing, but against a steadily increasing pressure. The obstacles to the increase in the food supply are not definite and fixed, but are likened by Mill to an elastic band, which stretches, but with increased difficulty, to meet the demands of the increasing population.

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Like its predecessors, this last argument is conclusive only under given conditions. While the concept of society was merely a static one, a clear case could be made by the economists in favor of the law of population as formulated by Mill. But this argument fails if society is dynamic and the average return which the population obtains for its industry is increasing. The opponents of the theory of population have been able to turn the point of Mill's arguments by showing that the average condition of humanity at present is at least no worse, and in all probability is much better, than in the past. It is claimed that we are passing not from good to bad opportunities for labor, but from poorer to better. Under such conditions the law of diminishing returns would not be operative, and consequently the conclusions which Mill draws as to the evil effects of the increase in population upon the past and present conditions of society would not be true. In a dynamic state of society there would be no pressure of population upon the limits of the food supply for an indefinite period. So long as there is any uncertainty as to whether society is in a static or a dynamic condition, Mill's law of population is open to attack, and it is not difficult to show the weakness of his whole argument concerning the effects of an increasing population.

There is a fourth statement of the law of population which is even more extreme than the three we have thus far considered. This is traceable to the discussion relating to the wage-fund. According to this theory the formula "population depends upon food" is narrowed into "population depends upon capital." Industry is limited by capital and not by natural forces. Man and nature cannot create prosperity without the aid of the capitalist as an intermediary. Food is no longer looked upon as the gift of nature to man, but as the gift of one man to another. In order to procure food there must be not only nature to produce it, but man to save it. The growth of population is limited by the rate of increase of capital, and not by the natural rate of increase of food. The powers of nature to increase food cannot be fully exercised, because of the lack of the "saving" quality in men. As the mass of the laborers

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lack this quality, their rate of increase depends not on themselves or on nature, but on the quantity of food which an outside class is willing to refrain from consuming. It is this concept of the law of population that has estranged the laboring classes from political economy and has given to recent socialistic literature a basis for its reaction from the old political economy.

Each of the four statements of the law of population which we have thus far examined can easily be shown to be defective. If political economy is to continue to make any use of the law of population, it is clear that this law must be re-stated in a manner more in harmony with the present tendencies of economic thought. The law must be given a new basis upon facts which are not open to dispute and which do not bring up in the mind of the reader the old bitter controversy aroused by the writings of Malthus.

The opposition to be harmonized is not between population and the means of subsistence, but rather between population and productive power. Productive power depends upon the intelligence of man and the efficiency of the social organization ; and as this productive power increases, the food supply increases. Productive power thus determines the quantity of food that a nation can obtain, and this quantity of food stands in no necessary and unalterable relation to the total possible food supply which could be obtained by the greatest utilization of all natural resources.

Productive power is really the connecting link, the equalizing force, between population and the food supply ; it checks the former and increases the latter. As civilization is the principle antagonistic to the law of diminishing returns, so productive power is the principle antagonistic to the law of increasing population. With the growth of those qualities in men which lead to an increase in the productive power, there is a diminution of the force of those passions which tend to increase population, thus gradually bringing about a harmony between population and food supply. In the primitive man the cruder appetites and passions are the strongest motives to action.

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With the development of a higher type of man other pleasures become stronger and the natural impulses which come from the primitive appetites and passions are gradually subdued. A new society thus becomes possible, in which individuals act in a way that tends to secure a closer connection between population and productive power.

The value of food to a poor man, after his own wants have been satisfied up to a certain point, decreases so rapidly that the value of those increments of food necessary to the proper nourishment of his family is less to him than the value of other elements in his own consumption. He neglects his family to supply these personal wants. If the father's productive power is small, in order to satisfy his urgent wants he places his family in such conditions that they necessarily suffer, and as a result population is kept down. On account of a lack of productive power through which a larger income might be obtained, the father is often compelled to select a house in an unhealthy region, to provide his children with insufficient clothing and to deprive them of many of those conditions which go to make up a healthy life. Give such a man a greater productive power, and he will place his family under better conditions, where the effect of bad air, impure water and other detrimental causes will be less harmful than before, and as a result the number of surviving children in his family will be greater.

An increase in productive power does not increase the number of children born into a family, but it does increase the number of children that can survive in a family and reach maturity; and it is only through some change in the productive power which enables the members of a community to place themselves in a different and better environment, that an increase in population is rendered possible. In a primitive society population does not increase, or at least increases but slowly, and this fact is due to the choice of surroundings which men make. The bad physical conditions surrounding a family are the results of its limited productive power. Lack of productive power forces the family to put itself under these conditions

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in order to satisfy its more pressing wants. The lack of productive power, therefore, and not deficiency in the food supply, is the cause of misery and vice. This may be illustrated by the case of early Philadelphia. In the first quarter of the present century population was more congested in particular localities than it now is, not because there was not ample food in and about the city, but because men of limited productive capacities placed themselves under such conditions that misery and vice were the necessary consequences. With the gradual increase in productive power in the city during this century there has been a rapid improvement in the condition of the average citizen, and as a result the greater population suffers less proportionally than did the smaller population at an earlier period, and misery and vice are reduced.

With a low productive power selfishness and the desire to satisfy immediate wants force the family almost necessarily into misery and vice. Even though the food were produced chemically at its present cost, so that the results of the law of diminishing returns could be avoided, the same causes would lead to misery and vice and check the increase in population. With a given productive power the people in a given region will act in a way that will lead to a certain amount of misery and crime. It may be true that only a few miles distant there are other conditions, permitting an increase in population which has no detrimental social effects, yet along with the choices which people are making with reference to their productive power, similar choices are being made in consumption, and the same vice and misery will prevail.

The new statement of the law depends, then, upon the opposition between different elements in man's nature, and not upon the opposition between man and external nature; and also upon the fact that an increase in productive power is due to subjective changes in man and not to objective changes in man's environment. The nature of man is gradually changing and new pleasures and powers are being developed, while accompanying these changes there is a constant increase in the productive power of individuals. With this influx of new qualities

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there is an efflux of the old, and as a consequence there is possible a constant increase in population, accompanied by a constant diminution in the rate of increase. From this we arrive at the somewhat paradoxical conclusion that the tendency to over-populate leads, not to over-population, but to under-population. The truth of this paradox may be illustrated by means of the following table:

TABLE I.

	I Industrial Qualities.	II Children Born in each Family.	III Relative Quantity of Food produced.	IV Number of Children surviving in each Family.	V Misery caused by Over-population.	VI Total Population.
A	1	8	3	$2\frac{1}{5}$	x	3 M.
B	2	7	5	$2\frac{1}{4}$	$\frac{2x}{3}$	5 M.
C	3	6	9	$2\frac{1}{3}$	$\frac{x}{2}$	9 M.
D	4	5	15	$2\frac{1}{2}$	$\frac{x}{3}$	15 M.

Let A, B, C and D represent four successive stages in the development of a society. In each stage there is an increase in the industrial qualities of the individuals in the society and a corresponding increase in their productive power. Stage A represents the primitive condition of this society, where its members have only one industrial quality, while later, in stage B they have two, in C three, and finally in D they have four industrial qualities. In stage A, where the industrial qualities are the most limited, the tendency to increase population will be greatest. The pleasures of the people will be few and inharmonious, while their appetites and passions will be little restrained by social and economic forces. In this stage there will be born (say) eight children to a family, in B seven children, in C six children and in D only five children. Every stage in the advancing civilization, accompanied by an increase in the number of industrial qualities, will open up new sources of pleasure and create new social forces through which the

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strength of the primitive appetites and passions will be reduced. A new equilibrium will thus be formed between the primitive and the social elements in man's nature, and there will be a decrease in the tendency to increase population.

With each increase in the number of industrial qualities the power of the society to produce food will be augmented. We will assume that the relative increase of the food supply is indicated in the third column. On the same area three families can be supported in stage A, five families in stage B, nine families in stage C, and fifteen families in stage D. There will therefore be a fixed limit to the increase of population in each of these stages of progress corresponding to the productive power in that stage. When this fixed limit is reached, misery, disease, famine or other forms of social distress must carry off the redundant individuals and keep the population stationary in amount, until some new increase of productive power extends the possible limit of population.

The fourth column indicates the number of each family that survive until maturity and thus become the parents of a new generation. If the amount of the food supply is stationary, only two children can survive in the average family. The more dynamic the society and the more rapid the increase in the number of its industrial qualities, the more quickly can it advance towards the ideal state and the larger is the number that can survive in each family. In stage A, although eight children are born in each family, yet the society is so static that but two and one-fifth children on an average can survive. In stage B, because of greater intelligence and of a more rapid increase in the food supply, a larger number can survive in each family, say two and one-fourth children; in stage C, under still better conditions, perhaps two and one-third children survive; and finally in stage D the number of surviving children may reach two and one-half to the family. In short the actual increase in numbers will be greater in each succeeding stage, although the number of children born to a family will be less.

The pressure of over-population is measured by the difference

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between the number born to a family and the number surviving. In stage A, where eight children are born to a family and but two and one-fifth children can survive, the pressure of population against its limits must be great enough to sweep off five and four-fifths children in each family, while in stage D the pressure is so reduced that a half of the children can survive. The standard of life can therefore be increased in each succeeding stage and the distribution of wealth will be more equitable.

The fifth column seeks to represent the misery which the tendency to over-populate creates in each stage of progress. If the misery and suffering of the average person due to this cause in stage A is represented by x, this average misery will be less in stage B, say two-thirds of x. In stage C it will be still less, say one-half of x, while in stage D it may fall to one-third of x. The detrimental influences of over-population are gradually reduced by social progress, and if there is great distress in an advanced society, it must be due largely to other causes.

The sixth column shows what will be the total population that can be maintained by the productive power during each of these stages of social progress. If stage A, with its limited productive power, can support three million people in the region occupied by the society, in stage B five million can be supported; while in stage C the number can be increased to nine million and in stage D to fifteen million. The social improvement in each succeeding stage is due on the one hand to the more perfect industrial organization which a larger population permits, and on the other to the reduced pressure of population.

Taking up the theoretical conditions which entered into Malthus's first discussion with Godwin, we might suppose that an ideal society having its industrial qualities fully developed could support sixty million people in a given region. The actual population, however, would stand in no necessary relation to this ideal number, and no calculation based upon the population which this ideal society could support would have any bearing on the actual population in any given stage of

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progress, or enable one to determine the limit to the amount of population which a society with a given productive power could support. Knowledge of such ideal conditions would be of no aid in determining the welfare of the society at any given stage, or the social distress which the tendency to over-populate creates.

No valid proof of the law of population can be based upon the relation between the primitive tendency of a society to over-populate and the purely physical conditions of the environment; nor are those arguments any better which seek to determine the pressure of population by the relation between the actual numbers in a given society and the ideal productivity of the soil when cultivated by an ideal society. The only sound arguments are those which connect the productive power of each society with its present tendency to increase in numbers. Through this comparison it will be seen that the pressure of population is greatest in the earlier stages of progress and that it is gradually reduced as society progresses. So long as a society continues dynamic, the less the tendency to increase population the more rapid can the growth of population be, and the greater the total population which a given region can support. Over-population is therefore relative and has its cause in social, not in physical conditions.

Viewing the problem of population from its social side, the checks to the increase of population must be arranged on some other plan than that proposed by Malthus. He recognized only the conscious restraints which act through individuals, and did not bring out the unconscious restraints which are operating all the while through social agencies. We see the vice and misery around us and feel within us the restraining influence of moral motives. They are indications that the natural inclinations of the individual are out of harmony with his environment. The vice and misery existing show that the will and reasoning powers of the average man are relatively weak in their struggle against the passions and appetites which he inherits from his primitive forefathers, while the need of moral restraints, even when these are most efficient, shows that

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the surplus of pleasure over pain is still on the wrong side. Moral restraints in social affairs would not be needed if the pleasures which the environment yields to right actions exceeded the pleasure to be derived from actions out of harmony with the economic conditions of a given period.

The function of moral restraint is to give increased vitality to social ideals and thus to reduce the surplus of actions prompted by lower motives. It is at present strong enough to bring the actions of the higher types of men into harmony with these ideals; but the continued presence of misery, vice and other positive checks to population shows how incapable it is, when unsupported by the proper economic conditions, to reduce the surplus of pleasure derived by primitive men from wrong conduct below that given by right actions, more in accord with the social environment.

Fortunately our social progress does not depend upon these conscious checks to population. Even when we have no thought of limiting population, unconscious checks are developing in every dynamic society which in a natural way bring the actions of individuals into harmony with the welfare of society. Of these unconscious checks the economic causes raising the standard of life are most effective. For as the number of pleasures forming a part of this standard increases, the inclination to indulge in any one of them decreases. New complements of goods are also formed in a dynamic society with every increase of productive power and with every reduction of the appetites. These causes are aided by changes in our imputation of utility, by which we attribute less of the joint pleasure derived from a complement of goods to the older and cruder elements of the complement, and more to the newer elements. This, too, prevents disagreeable associations and increases those of an agreeable nature. The added pleasure which these new adjustments give to actions in harmony with the social environment makes it more natural and easy for individuals to do what is right, and thus lessens the need of conscious checks to population, whether in the form of vice and misery or of moral restraint. The causes which increase the

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productive power of society also increase unconscious economic checks to population. Productive power depends mainly upon subjective conditions and every increase therein is the result of new mental powers, which modify the nature of man through the conflict between them and the primitive passions and appetites. Prudence and self-restraint are developed by the same conditions that increase the food supply. Productive power is therefore the equalizing force between population and the food supply. Whatever increases the latter must act as an unconscious check to the former.

The other powerful checks to population are sociological and physiological. These act unconsciously and with increasing force in each succeeding stage of a progressive society. Among the sociological checks, I include all those causes in society which keep men from feeling the force of their passions and appetites. Society throws around its members such restraints that they rarely become fully conscious of the strength of the passions within them; and only as they come under peculiar conditions where the normal restraints of society are not operative are they placed in an environment where they feel the full force which these passions can exert. In a progressive society the associations that arouse these passions decrease in number and disagreeable associations are more easily awakened which reduce their power and limit their activity.

The growth of these sociological checks is retarded by the freedom possessed by persons of a low moral tone to parade their vicious tendencies in public places and to corrupt public morals by creating improper associations. We try to guard virtue by putting it within walls, when the proper course would be to exclude from society the vicious element and enclose it within bounds, so that the innocent can enjoy public places without contaminating influences. The current of our thoughts would be purer if society became more homogeneous through the exclusion of the rougher element now at large. If society frees itself from the influence of these persons, it will be possible to root out many old habits and associations through which the passions are aroused. New habits and instincts would

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prove safeguards against the bursts of passion which improper associations produce. In our social life we might become unconscious of our passions through the lack of associations to arouse them.

The artificial restraints separating men and women have much to do with the corrupt thoughts aroused by the presence of the opposite sex. Where convent life is an ideal for young women, the associations created by the presence of women relate to unbridled indulgence. Under these conditions a feeling of honor may protect a select few within given social circles, but isolated unprotected women are thought of as impure or as legitimate prey. Where, however, constant contact between the sexes is possible, a multitude of pleasant acts and events form the prominent features of social life and force into the background the morbid thoughts of isolated persons. Individually these new pleasures may not be so intense, but they form a harmonious complement of far greater power than the cruder pleasures they displace. A feeling of honor restrains men even in the presence of unprotected women, and the thought of taking undue liberties becomes repugnant to the finer feelings which the new relations create. These social feelings and pleasures greatly lessen the need of conscious checks to population and tend to create an equilibrium between it and the food supply.

The physiological checks are due to those physiological changes in men which reduce the strength of the primitive appetites and passions. Carey and Herbert Spencer have fully discussed the character of these changes and each has developed a theory to explain their origin. The mere fact, however, that there are such reductions of the passions and appetites is sufficient in this connection.

There are, then, three classes of unconscious checks which supplement those mentioned by Malthus. With each succeeding step in social progress their effects accumulate and make it much more easy and natural for the members of a higher civilization to do those acts which harmonize with the conditions of progress. First, the economic checks strengthen those

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mental qualities which aid production, and favor changes in consumption which add to the pleasure of those forms of consumption that increase the welfare of society. Then, through the action of society, sociological checks are thrown around the members of a progressive society which make them less conscious of the passions within them. And finally, the physiological checks begin to operate through which the passions themselves are reduced and lose the power that they once had in determining the choices of individuals. In these ways, through the growth of economic, sociological and physiological checks to population, society is gradually getting itself into a better condition, where there is a greater harmony between the different sides of human nature. The opposition between the productive power of society and its rate of increase is lessened, while vice and misery cease to be a necessary consequence of social progress.

From the foregoing it can be seen that Malthusianism is not a term with a definite meaning. Under this head several important social doctrines have been discussed. The lines separating them from one another have been but dimly seen, and much confusion has resulted because the contending parties have not been fully conscious of what they desired to defend or to refute. The original dispute lay in the domain of theoretical politics about the possibility of an ideal state. The second was a practical contest relating to the causes of misery and vice. The first contest was between Malthus and the political reformers; the second between him and the moral and social reformers of his time. These moral reformers had no interest in an ideal society. Being religious in tone, they looked forward to a religious millennium in heaven and not to an ideal political society on earth. They were, however, firm believers in the perfection and harmony of natural law. They could not, therefore, accept a doctrine which implied an opposition between the natural tendencies of man and those of external nature, and made vice and misery the result of natural instead of moral causes.

In addition to these doctrines about human ideals, the Mal-

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thusian controversy brought to light two very important doctrines about the benefits and evils of the tendency of population to increase. At first the discussion centred on the question whether or not the tendency to over-populate was an evil while so much of the earth was unoccupied; but finally the question arose, whether or not the tendency to over-populate leads to social progress by favoring the survival of the fittest. By the time this final proposition was fairly before the public the basis of the discussion was shifted from economic to biologic grounds. Malthusianism became Darwinism, and the economists were freed from any need of discussing the law of population as a special problem of their own science.

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LEGISLATION AGAINST FUTURES.

A DOLLAR per bushel for the farmer's wheat and flour for the laborer at three dollars per barrel, is the dream of the economic alchemist. To make this dream a reality, — to secure high prices for the producer and low prices for the consumer, — is to discover the philosopher's stone. That it still remains a dream is attributed by many not to the necessity of nature, but to the perversity of man. To these the first obstacle presented is the trader, bent on buying cheap and selling dear. He it is who seems to lessen the price to the producer and raise it to the consumer. Hence from the time when Mercury, the god of trade, was described as "a schemer subtle beyond all belief," the trader has been an object of popular suspicion. Producer and consumer alike grudge him the toll he takes. In recent years, however, this suspicion has been transferred from the trading body as a whole to a new class of middlemen, the speculators. Especially is this true of speculators in their particular capacity of "short-sellers." The feeling finds expression to-day in attempts to suppress the "short-seller" by legislation. This has been the aim of all the so-called "anti-option" bills — the Butterworth Bill of the fifty-first Congress, and the Hatch and Washburn Bills of the fifty-second and fifty-third Congresses. While these bills have been almost unanimously opposed by leading bankers, merchants and manufacturers, they have received a strong popular support. This is due largely to the fact that the evils of speculation are apparent and have been made familiar to the general public through the press, while its benefits have been set forth only in technical trade or economic journals.[1]

The authors of these bills, however, declare themselves as not opposed to what they call "legitimate speculation"; their

[1] See particularly two articles by Mr. A. C. Stevens, *Quarterly Journal of Economics*, II, 37; and POLITICAL SCIENCE QUARTERLY, VII, 419.

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attack is directed solely against the disastrous system of "short-selling." This position shows a failure to appreciate the true function of speculation, and it will be well briefly to consider the development of a distinct speculative class and the significance of the "short-seller" in the speculative system, in order to understand the ends aimed at by these bills and the arguments brought forward in support of them.

I.

The central feature in the economic organization of modern society is the market. From the standpoint of the individual, the production and distribution of commodities are carried on with a view to their exchange. Consequently the producer will expend his energies on such commodities as will have the greatest market value compared with the expenses of production, and the merchant will take these commodities to the market where they will command the highest price. But this adjustment of production and distribution according to values will be accurate only in proportion to the success of producer and distributor in ascertaining such values. The value of any commodity varies from time to time and from place to place, and the supposed value according to which the producer started his crop may prove to be very different from the actual value when the production is complete. The test of perfection in the organization of trade is the promptness with which changes of value are learned and the accuracy with which they are predicted.

The uncertainty as to values makes every business undertaking to some degree a venture, involving risks as to its final outcome. These risks are inherent in all business and are no more artificial than the whole commercial order under which we live. They are risks that thrust themselves upon business men and which business men must meet. It is the assumption of these risks of changes in value which constitutes speculation.

Value being a phenomenon of exchange, risks of changes in

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value arise only where the system of exchange is already developed. When every man produced for himself alone, he was forced to undergo risks of production; but only when he had begun to produce more than he wanted for his own use did he become subject to uncertainty in finding a market for his goods. The more extended the system of exchange became, the more important became this uncertainty. But the producer was soon relieved of the burden of risk thus created by the development of a distinct speculative class, which stood always ready to buy his surplus product and assume to itself the chance of gain or loss through possible changes in value.

This development did more, however, than shift the burden. It tended to make the risks themselves much less numerous. With the expansion of trade and the growth of intercourse among traders, many of the local influences affecting price became less important, while gains and losses due to such causes tended in the long run to balance. A moderate profit became assured to the average trader under average circumstances. At the same time the risks that remained became more and more important. Especially was this so in the trade in all the great agricultural products. No development of trade could remove the uncertainties of supply in regard to those products. And as the market came to be more and more extended, until with the development of steam transportation it covered the whole civilized world, the possibility of a total loss by some sudden unforeseen change in conditions became a constantly increasing burden to the mass of traders. An occurrence in some far corner of the globe, of which the small dealer could have no knowledge, might utterly change the course of prices on which he had relied to make his profits possible.

Thus with the elimination of petty and local risks and the increasing importance of the fundamental risks, the trading and the speculative elements in all business came to be more sharply distinguished. What was now needed by the trader, was a distinct body of men prepared to relieve him of the speculative element of his business, that is, of the risks of dis-

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tant and future changes, just as he himself had formerly relieved the producer of his distinctly trading risks. And as the need grew,[1] the speculative class became differentiated from the trading body as the latter had been differentiated from the producing body. The importance of this development can hardly be overestimated. The striking feature is, not that speculation has increased, for that is but a necessary accompaniment of increased trade, but that speculation has become the business of a special class. Previously the speculators had been traders. They had been importers and exporters, seeking their own markets and moving their own goods. Now they became a third class, distinct from both producers and exchangers. Whereas formerly each man bore his own risks, the new class has arisen to relieve him of these risks. Instead of all traders speculating a little, a small class speculates much.

The speculator stands prepared to assume the ownership of a certain property at the prevailing price, and to take the risk of a fall in value in the hope of a rise. This form of speculation has always existed. But the modern speculator must do more; he must be ready to fix now a price which he will at a future time pay for a certain amount of some commodity. The business of the producer is precarious because the price that influences him to make his outlay may change; but if he can estimate what his produce is to be, he can find a speculator who will fix a price at which he will take it when the process of production is completed. Then if the price changes, the speculator bears the consequence. He has agreed to take the product at a certain price, and that price he must pay regardless of subsequent fluctuations. This speculator is a "bull." He speculates "for the rise." That is, he expects the price to rise and he assumes the risk of a fall.

[1] The fact that the system developed gradually as the need developed blinds many to the fact that there was any such need at all. It is all very well to say that no trouble was found in marketing the produce without this system forty years ago. It does not follow that the system is not needed now. Conditions have changed radically, and it is only within the last thirty years that the development of a world market has been possible.

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The risk to an owner of property is that it will fall in value; but for one who is postponing a purchase there is equal risk of a rise. A complete system of speculation must meet this risk also. And it does meet it by providing a speculator who will fix a price at which he will furnish the would-be purchaser with the desired commodity at such future time as may be stipulated. He too must accept the contract price, whatever the market price may be when the time for delivery arrives. This man is the "bear"—the "short-seller." He assumes the risk of a rise, while expecting prices to fall.

But such speculation is only possible where the necessary machinery has been developed. In the first place it can be carried on only in the case of representative goods. If a man buys or sells goods not yet in existence, the commodity in question must be of such a kind that every part of it is representative of the whole—is of equal value with every other part. The earliest organized speculation on a large scale was in the shares of stock companies, because of this very representative quality of the shares. The same quality is secured in grain and cotton by fixed classifications of different grades. The machinery for speculation in produce was developed from the practices of importers, those of England and Holland especially. They adopted the plan of issuing receipts (warrants) for goods deposited in warehouses, which receipts specified the grade of the commodity in question and passed from hand to hand as equivalent to the commodity itself. The commodity was deliverable to the last buyer on presentation of the warrant. But importers soon became unwilling to undergo the risks of changes of value while their goods were in transport. Accordingly there grew up the practice of selling goods "to arrive," and even "for shipment," *i.e.*, goods still in the exporting country. These however were sales of specific lots. The next step was for the importer to take the first good offer made him for the goods in which he dealt, deliverable at a future date, and trust to making the contract good by purchases through his agents in the exporting country. This was short-selling pure and simple, and was the one thing needed to complete the machinery of speculation.

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The regulation of these facilities for trading in future products was taken over by the organized body of merchants in each community, out of which bodies have grown the great speculative exchanges of to-day. As trade increased, these facilities were rapidly perfected. Impartial grading and uniformity of contracts are the chief needs in such business, and these are now secured by an established classification of different kinds and qualities of wheat, corn, cotton and all other commodities so dealt in, and by official grading according to such classification by sworn inspectors. Warehouse receipts and elevator receipts (warrants) no longer represent the particular lot deposited, but are merely orders for a certain amount of a certain grade of the commodity named, payable on demand. These receipts are bought and sold as commodities and constitute a complete delivery on all contracts. Finally, the form of contract is stereotyped, all the conditions being fixed except the price and time of delivery, while elaborate provision is made for the quickest possible cancellation of debts and settlement of contracts.

With all details thus simplified, the two opposing forces in the speculative market face each other on an equal footing, relieved of the duties of ordinary trade. They have no care for the particular lots of any commodity, for storing or for transportation. They are left free to study by every possible means the influences that can affect the market for the commodities in which they deal, causing a rise or fall in price. That they are not concerned immediately with the goods that they buy and sell and cannot themselves distinguish the grades or qualities of such goods, is no reproach to them. Such knowledge is the business of traders. But these men are not traders; they are speculators, and they fulfill their function as speculators when, after full consideration of all knowable circumstances bearing on the future price of their commodities, they enter the market to sell if they expect a fall, and to buy if they expect a rise.

The speculators estimate the future demand and the future supply in order to ascertain as nearly as possible the future

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price. On their estimate of future demand and supply they create a present speculative demand and supply, which determines the price of "futures," *i.e.*, the price at which the commodity in question can be bought or sold for future delivery. The price of "futures" is an anticipation of the actual future price. It is the market estimate of what the price is going to be at any given time. Thus in December there are certain indications as to what the condition of the wheat market will be in the following May; and the buying and selling by speculators establishes a December price for May delivery. It is a real price at which any person may secure the stock of wheat which he needs in May, or get rid of a stock which he will then possess; but it is also an estimate, the best that the market can make, of what the price of "cash" wheat will be when May arrives. That the estimate and the actual price are generally different, and sometimes widely different, is due to the impossibility of foreseeing all the influences that affect the price of a commodity. As speculation becomes more perfect, this divergence tends to diminish, but in the meantime it is what attracts men into speculation and makes their gains and losses possible. Ideal speculation would render a future price absolutely predictable, that is, would annihilate itself.

The bears, or short-sellers, represent the supply forces and the bulls the demand forces. Those who think the price of the commodity, say wheat, is going to rise, come into the market and buy, and those who are of the opposite opinion sell short to the buyers, hoping to fulfill their contracts by buying in at a lower rate. The equilibrium point of this speculative demand and supply marks the opinion of the market as to future prices. It will be seen that the speculative buyer and the short-seller are mutual checks on each other, the one being as much as the other a necessary part of such a system of speculation.

The establishment of this price for the future delivery of a commodity is the great service of speculation. We are wont to think of speculation as beneficial chiefly through holding back supplies in times of plenty for use in less prosperous

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times. This is indeed an important service, but it is no longer performed immediately by the speculators. Since the production and distribution of commodities, as to both time and place, follow their probable values, speculation's great work is to fix these future values according to the most enlightened opinion of the most competent men. We may, then, sum up the function of speculation in produce as follows: It directs the production and distribution of commodities into the most advantageous channels, by establishing, at any particular moment, relative prices for different commodities deliverable at different times and places.

II.

We are now in a position to examine more intelligently the arguments advanced in favor of anti-option legislation.[1] Such legislation aims primarily at suppressing the short-seller. In the Hatch and Washburn Bills of 1892 the attack was made directly on the short-seller himself. It was the habitual and professional selling of what one did not possess that was held up as the evil to be suppressed. In the bills before the fifty-third Congress the attitude taken was different. Mr. Hatch seemed to repudiate his old opinions, and now made the test to be the "absolute sale and actual delivery" of the commodity. The reasons for this change were not clearly given. The new measure seemed to allow short-selling, and so nominally "obviated all the objections to the former bill." But just what *was* aimed at is not clear. Suppose a grain dealer

[1] The name anti-option has been given to these bills because they have been bills for the taxation of "options" and "futures." Futures, as defined in the bills, are such contracts as have been spoken of above, for the delivery of a certain amount of a given commodity at a future time. Options is the word applied by the framers of these bills to what are more commonly known as "privileges." These are the familiar "puts" and "calls." They are contracts whereby one party acquires the *right* to receive or deliver the commodity, but is not *obligated* so to do. Some confusion has arisen from the fact that the word option is commonly used in business as synonymous with "future," because the seller generally has an option as to what day in the stipulated month he shall choose for delivery. The question of privileges, however, is of comparatively little importance. It is only with the question of futures that we are here concerned.

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sells 50,000 bushels of wheat for forward delivery. It is re-sold through a whole line of speculators till perhaps the twentieth buyer wants it for milling purposes. When the time for delivery arrives the elevator receipt may be sent through the whole line and cash paid on each delivery. But it saves trouble if a "transferable order" is passed along by which the last buyer may claim delivery direct from the original seller. The others settle their "differences." This is actual delivery as much as the other. In either case nine-tenths of the business has been speculative, and one-tenth for trade. Suppose now the original seller has changed his mind and wants to "hedge" on his first contract, or that the first seller was himself merely speculating. The last speculator in the line, instead of selling to the miller, sells to him. This forms a circle and settlement is made by "ringing out." What difference in principle is there in the two forms? Evidently none. One had a fraction of real trading, whereas the other was perhaps all speculative. But in all exchange business the dealings for differences and the dealings by *bona-fide* traders are so mixed as to be indistinguishable. If Mr. Hatch only aims at prohibiting a particular form of settlement, he will merely obstruct the easy working of the system without touching the principle involved. All contrivances that facilitate transfers and obviate the cumbrous methods of cash payments are a distinct benefit to trade.

But the real aim of the new measures is the same as that of the old, and the arguments made for the bills of 1892 have been expected to do service for these later ones. That this is so, is seen by the most cursory glance at the speeches and especially at the committee reports in favor of the bills. The wording is changed somewhat, but the real motive is the same. Though short-selling for business purposes has been admitted to be a necessity, the great extension of the system in the hands of professional speculators is still the point of attack, as being destructive of the welfare of the producing class. If this contention is not true, there is no more reason for passing the later bills than for passing the bill of 1892. The issue

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then resolves itself into the question of the use of the short-seller in the organization of business.

According to the theory of speculation in the first part of this paper, short-selling is the last step in the development of a much needed machinery for the determination of future prices according to all the market conditions present and future. The short-seller represents the forces of supply, and can only represent a future supply by a present speculative supply. But apart from the nominal object of raising revenue, the first object of the Hatch Bill of 1892, as laid down in the report of the committee on agriculture,[1] was "to relieve the producer of the destructive competition to which he is now subjected by the offering upon the exchanges of illimitable quantities of fiat or fictitious products by those who do not own, and have not acquired the right to the future possession of, the articles which they pretend to offer and sell," or, as it is stated in the report[2] on the bill of 1894, "by those who do not intend to, and cannot, terminate the contract by actual delivery of the articles which they pretend to offer and sell." In either case the fundamental assumption is, that the great quantity of recorded sales, which perhaps aggregate many times the crop raised, are simply an enormous additional supply forced on a market in which the other forces of demand and supply have already attained an equilibrium.

It is however easy to be misled by figures. These recorded "sales" simply give the amount of transactions. If a lot of 10,000 bushels of wheat passes through ten hands within a week or month, the total transactions are recorded as 100,000 bushels. And they are recorded as "sales" even if the eagerness of the buyers has caused a rapidly rising market. These figures in themselves evidently do not signify anything as to the actual supply.

It is insisted, however, that "illimitable" quantities of "fictitious" products are actually offered, and that these offers must reduce the price. The proposition seems eminently

[1] 52d Cong., 1st Sess., House Rep., No. 969.
[2] 53d Cong., 2d Sess., House Rep., No. 845.

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reasonable. There can be no doubt whatever that "illimitable supply" will break any market. But what has stopped the progress of the fall? The advocates of these measures have brought to their support[1] the principle laid down by Tooke, that an increase in the supply of grain regularly results in a much more than proportional fall in price. Therefore, when the distinguished senator whose bill was before Congress in 1892 shows that an amount of "fictitious wheat" fifteen times the actual wheat offered was poured into the market during that year, we look at once to the principle advanced and find that the price of wheat ought to stand at less than one cent a bushel. Still there can be no question of the validity of the principle itself; and the only explanation of this conclusion seems to be that the facts are not as stated. Certainly no one can seriously maintain that "illimitable" supplies of fictitious produce are, or can be, poured into the market by the short-seller. There is something that puts a limit on the supply and a check on the seller. What is it?

Again, let us consider the way in which the short-seller pursues his "nefarious business." We are told again and again that he makes the price to suit himself, and robs the producer of enormous sums. The process is truly startling in its simplicity. The bears merely contract to sell an illimitable supply of (say) wheat; this forces prices down, and then they cover their contracts at the lower price. The price is bound to go down; for if it shows any troublesome desire to maintain itself, they have only to keep on selling "wind" until the market breaks. Of course they reap the difference in price, and the more they have sold, the greater their profits. In this process the price apparently does not rise when the covering contracts are made. This is because, say some,[2] the wheat which the shorts *buy* is based on real holdings; or, say others,[3] because they cannot really secure and deliver all the wheat, and so simply settle the contracts at the market price; or because

[1] See testimony taken before the committee on agriculture, 1892, p. 16.

[2] *Cf.* C. W. Smith, Commercial Gambling, p. 148.

[3] Senator Washburn, Cong. Record, XXIII, pt. 6, p. 5986.

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on general principles "the long-buyer is a less potent factor in the market than the short-seller." Whatever the cause, here is the fact, a sure and safe method of selling at one price, depressing the market, and buying in at a lower price, scoring the consequent profit.[1] With a description of this process as his *vade mecum*, the way of the speculator is easy and his profits far from light.

The legislators who see so clearly how they might thus take unto themselves the "hard-earned substance of the farmer," may seem to show a most praiseworthy self-abnegation in exposing the method and attempting to make it unlawful. But the men who have put this system into practice present a curious contrast to what we might expect of those who should take advantage of such a scheme. Of the many who have sold farm products short, not one in a hundred has grown rich; and even those who have been more or less successful do not show the boldness of men who have a "sure thing," with nothing to fear. If prices remain firm, these men do not rush in deeper and deeper, but draw out with all possible despatch. What is it, then, that men possessed of such "complete power over the market" have to fear?

Something has evidently been left out of account in this theory — something that keeps the price from falling below a certain point, despite the illimitableness of the supply, and that casts a shadow over the pathway of the covetous bear. The common answer to the charge that short-sales depress the price is, that every sale means a purchase, and that there is a speculative demand to meet the speculative supply; and the common idea has always been that the thing that makes the bear so nervous is the bull.

This proposition is greeted with ridicule by the anti-optionists, as "one of the oldest gags in the argument of the whole question." But they meet it with reasoning as well as with ridicule. They are doubtless right in denying that because the seller implies the buyer, and for every sale there is a purchase, *therefore* the contending forces are equal, and short-selling is always

[1] *Cf.* W. E. Bear, Market Gambling, *Contemporary Review*, June, 1894.

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equalized by long-buying. The number of buyers depends, of course, upon the price, and buyers will be forthcoming if the price falls far enough. So, too, they are right in saying that the price may be depressed by a multitude of unaccepted offers. But though the increase of speculative supply, like the increase of real supply, may depress the price, the question whether it does so do depends upon the strength of the demand. The assumption of the advocates of these measures is, that the demand depends for its strength solely on consumers and "real traders." That this is not the case is evident from the fact that prices have not fallen to an unlimited extent. As soon as the price falls to the point where speculators think it is below what the actual price is going to be, these speculators come in and buy. The bears cannot continue to sell "wind" indefinitely; for the purchasers become equally eager, and their purchases raise the price. Men are just as ready to make money from a rising as from a falling market. As a matter of fact, then, we see that there is a great fictitious demand to meet the fictitious supply, and the cause of the bear's fear is, after all, the bull.

When the Senator from Minnesota, then, argues[1] that the short-seller can of himself depress the price, whereas the owner of the property can only advance the price with the consent of the buyer, and that therefore "the 'long' is a far less potent factor in advancing prices than the 'short' in depressing them"; or that, "in other words, one man may and does put the price down, whereas it requires the concurrent action of at least two people to advance the price"—he does not meet the point at all. It is not the owner that opposes the short. It is the speculative buyer. The latter does not have to wait for any one any more than does the speculative seller. He can and does go into the market, bid for large quantities of the product, and thereby raise the price by his own efforts, exactly as the short-seller, by offering similar amounts, seeks with more or less success to depress the price.

Again, when the senator argues[2] in the next place that, even if the seller implies the buyer, prices are not determined by

[1] See Cong. Record, XXIII, pt. 6, p. 5985. [2] *Ibid.*

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such offers, because they are often manufactured by "wash sales," he says nothing of the fact that such sales may be used to advance the price. Nothing too severe can be said of the practice of "wash sales"; but they are no more an instrument of the bear than of the bull.

And when, in the third place, Senator Washburn holds[1] that the "fictitious" buyer is no support to the market, because he buys not actual commodities, but merely "contracts"; and is really a destructive influence, because at the approach of the time for delivery he rushes to get rid of his "contracts," and breaks the market by his liquidation — a similar contradiction is involved. In the first place, one is inclined to wonder why, if the short-seller cannot possibly deliver on his contracts, as we are so vigorously told, and would be in a deplorable state if delivery were demanded — why under such circumstances the buyer is so afraid that such delivery will take place and is so anxious to liquidate before the occasion arrives. But apart from this, it is evident that what is said of the long-buyer is equally true of the short-seller on the other side of the market. It makes little difference for this argument whether fictitious buying and selling have the same effect upon the market as real buying and selling or not; but surely the distinguished senator cannot hold that fictitious selling does have the same effect, as he maintains in denouncing the competition of the short-seller, and that fictitious buying does not, as he maintains in denouncing the influence of the long-buyer. In any case, what is true of the one is true of the other. If the anxiety of the long-buyer sometimes makes him a depressing influence, so the anxiety of the short-seller sometimes makes him an influence for the advance of prices. It is true that nothing will force prices down like a stampede of bulls in a rush to liquidate; but it is equally true that nothing will send prices up like a rush of frightened bears to cover their short-contracts.

That the short-seller does not control the market, is further made evident by the fact that prices of farm products rise and fall quite independently of the amount of fictitious transactions.

[1] See Cong. Record, XXIII, pt. 6, p. 5986.

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If the influence of these transactions is on the whole to depress the market, the greater the amount of dealings, the lower ought the price to stand. But no such correspondence exists at all. Take, for example, the figures of three consecutive years, which illustrate what is true of the whole period since short-selling was instituted:

WHEAT FUTURES SOLD ON N. Y. PRODUCE EXCHANGE.[1]

	Bushels.	Average price per year.
1891	1,604,450,000	$1.08
1892	1,079,713,500	0.89¾
1893	972,670,000	0.72⅞

The same is true of monthly and weekly sales and prices. The extension of fictitious dealings is seen to be in no way connected with a fall in price.

The advocates of anti-option legislation have certainly not made good their first and most important claim, that the extension of these fictitious transactions has put the market into the control of the short-seller. They find strong support, however, in the fact that the price of farm products, and of wheat especially, has suffered a great decline. On this they base a negative argument to this effect: Since the high price of wheat in 1882 there has been a steady decline of price, till now wheat is worth not much more than half what it was at that time; there is no increase in supply to warrant this change, for the acreage of wheat lands has not increased in the last twelve years: therefore some "sinister causes" must be at work — causes that have arisen since 1882. The system of selling "illimitable fictitious products" has arisen since that time; in it, then, we find the sinister influence that has depressed the price.

This is plainly in contradiction to the most familiar facts. In the first place, there has not been a steady decline in the price of wheat since 1882. The price fell for about five years, reacted after 1887, culminated in 1891, and since that time

[1] Figures of transactions are from *Bradstreet's;* prices are from reports of produce exchanges.

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has fallen off again in the most startling manner; we ought then to find corresponding variations in the "sinister cause." But the system of short-selling has steadily increased in importance without any such changes. Furthermore, the system was developed some years before 1882, and it was due to large fictitious transactions in that year that the Chicago price was kept above the price in other markets and higher than actual conditions warranted.[1] And thirdly, though the acreage and the crops in this country after 1882 showed no increase over the years just preceding, the fact was that America no longer made the price of wheat. All wheat-raising countries had come into the market, and the characteristic feature of the years after 1882 was an increase in the world's supply.[2] The conditions have again changed in this country, and the excessive supplies of the last few years, combined with Russian and (worst of all, because unexpected) Argentine competition, make it unnecessary to seek more "sinister causes" for the course of prices. As to the fall in the last few years, the following tables are instructive :[3]

TOTAL AVAILABLE STOCKS OF WHEAT IN THE UNITED STATES, CANADA, IN AND AFLOAT FOR EUROPE, AND IN AUSTRALIA ON THE DATES NAMED.

	Bushels.
July 1, 1894	154,000,000
July 1, 1893	157,000,000
July 1, 1892	102,000,000
July 1, 1891	89,000,000
July 1, 1890	74,000,000
July 1, 1889	68,000,000

[1] See "The Price of Wheat Since 1867," by T. B. Veblen, *Journal of Political Economy*, December, 1892.

[2] *Ibid.*

[3] From *Bradstreet's*, July 7, 1894, and December 8, 1894.

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DOMESTIC STOCKS OF WHEAT DECEMBER 1, WITH COMPARISONS.

In U. S. and Canada.	East Rockies.	Pac. coast.	Both coasts.
December 1, 1894,	113,116,000	14,582,000	127,698,000
December 1, 1893,	96,597,000	10,629,000	107,226,000
December 1, 1892,	94,671,000	10,415,000	105,086,000
December 1, 1891,	62,328,000	10,619,000	72,948,000
December 1, 1890,	44,843,000	12,361,000	57,205,000
December 1, 1889,	54,455,000	8,120,000	62,575,000
December 1, 1888,	51,394,000	6,476,000	57,871,000

And yet in the face of such conditions as these, we are told that there are absolutely no "natural causes" for the recent fall in price!

But suppose it be admitted that the short-seller does not control the market — that there are forces of equal strength on the other side devoted to the advancement of prices; have we then proved that the system is not reprehensible? Can we justify the determination of prices by this "juggling with the product of the farmer," even if it be as easy to juggle prices up as to juggle them down? This question was answered in the first part of this paper. The function of speculation was there shown to be the establishing of a price for future commodities. A means of fixing a price for future products would have been a blessing to trade at any time; but when, with increased facilities for communication and transportation, the market for the staple agricultural products became a world market, some such means became a necessity. Otherwise all trade would have been speculation.[1]

The price for future goods, like any price, can be made only by buying and selling, and it depends on the demand and supply in respect to future goods. Let the farmer, then, fix the price,

[1] Space has not been taken in this paper to consider the particular ways in which risks can be shifted to the speculating class. The most familiar of these is the practice of millers, elevator men and exporters, in "selling against" the stocks which they hold or export. The advocates of these bills say that this practice can still be continued under the new régime, overlooking the fact that it would not be possible except for organized speculation in the hands of a special class. An excellent account of the method is given by Mr. A. C. Stevens, in an article already referred to, *Quarterly Journal of Economics*, II, 27.

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say the anti-optionists. Why should he be "despoiled of that voice in fixing the price of the product of his labor and capital which is accorded to other producers"? But the prices determined by speculation are prices for future goods and are made by transactions based on probable future conditions. These conditions are purely matters of estimate, and the farmers as a class are not able to weigh the numberless influences which may affect the future market for their commodities. Only those men who have great experience, wide knowledge and the most improved means of obtaining information, combined with cool judgment, courage and the faculty of quick decision, are competent to forecast the course of future prices and forestall the probable event by their own purchases and sales. And it is the great speculators who combine these qualities in the greatest degree.

When, therefore, the distinguished sponsor of the Senate bill charges the exchanges of the country with being mere "price factories," the exchanges may well admit the truth of the charge. That is just what they ought to be. We have seen that by making prices which express the opinion of the most intelligent men, they direct production and distribution into the most profitable channels. Through these "price factories" the intelligent farmer is enabled to market his crop with greater profit and less danger of loss than would be possible if the old system were applied to modern conditions. On the other hand it may be that the shiftless and dull are affected as such persons are in all walks of life by the adoption of more intelligent methods by their competitors.

The main charge, however, is that these prices are made regardless of the law of supply and demand. The objects of the House bill of 1894, as stated in the report of the committee on agriculture,[1] were "to restore to the law of supply and demand that free action which has been destroyed by the practice of 'short-selling'"; and to afford relief "by restoring the functions of the law of supply and demand now inoperative by reason of the limitless offers of the short-seller"; and still

[1] 53d Congress, 2d Sess., House Rep., No. 845.

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further, "to restore to the producer an honest market and such prices as will follow the unfettered action of the law of supply and demand." Similarly, in the speeches made in support of such legislation great stress is laid on the iniquity of an infringement of this law.

From the standpoint of the anti-optionist the law of supply and demand is a moral law. He holds that prices ought to be determined by supply and demand and that it is wicked to determine them in any other way. He fails to see that the "law of supply and demand," like any economic law, is merely a statement of facts. If it is no longer a true statement, then it is the law and not the facts that must be remodeled. Neither Congress nor the merchant body is called upon to "restore" the law to its former place.

Both the advocates and the opponents of such legislation, however, will agree that the speculative supply and the speculative demand do determine the speculative price, *i.e.*, the price of futures. The real point at issue is, whether this speculative supply is determined by actual conditions. If not, the function of speculation as a means of forecasting the market is not fulfilled, and its economic benefit is hard to see. The enemies of the existing system, however, in denying that prices are determined by actual conditions, confuse actual conditions with physical conditions. They take the mediæval view of price as an objective something, springing full-fledged from a physical supply and a definite demand. Seeing that prices are not wholly determined by the existing stock of a commodity compared with the amount wanted for immediate consumption, they come to the conclusion that "demand and supply are inoperative." It is evident, however, that even the demand for "cash" wheat will not be determined by the stock on hand at any particular time, and never was so determined under any system. As long as men are able to postpone their purchases or sales, they will carefully consider the conditions in different places and the chances of changed conditions in the immediate future, before deciding what their transactions shall be and at what rate they shall be made. Supply does not mean the

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stock in existence, much less the amount of a given crop, nor demand the amount that can be used consumptively. They depend on mental operations — on opinions held in regard to numberless facts that may affect the market.

But if the price of present goods is purely subjective in its determination, depending on the knowledge of certain facts and suppositions as to others, much more is this true of the price of future goods. The question, then, is not whether speculative prices are determined by the existing condition of a physical supply, but whether they are determined by the most intelligent suppositions regarding future supply and demand. If this is true, the speculative price will approximate as closely as possible to the actual future price, and the real work of speculation will be accomplished.

That this is the case is evident from the effect on the market of every piece of news, at all authenticated, affecting future supply or future demand. Good weather in Dakota, the repeal of an export prohibition in Russia, cheapened transportation from India, a cessation of hostilities in South America, — all these and numberless minor events pointing to a fall in price, bring out an increase in speculative supply. While a frost in Kansas, a drought in India, the appearance of grasshoppers in Iowa, the chance of a "car famine" in the United States, or the rumor of a war in Europe, — all occurrences, in fact, that point to a rise in price, call out an increased speculative demand. We should not be misled by the large transactions based on a single crop. So long as men keep changing their opinions with every change in news, a crop will be bought and sold many times over, but from this no harm necessarily results to the producer. The speculative supply increases when an increase is expected in the actual future supply, and falls off when the indications point to a deficient future supply. In the same way the speculative demand varies according to the expected changes in the actual future demand. However much Congress would like to regulate the prices of future goods, those prices are and must be regulated by the estimate men put on the future supply and demand.

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But opinion alone cannot affect prices. Opinion must be backed by offers to buy or sell. Here arises the possibility of a serious evil. All the indications may point to a certain result, and yet speculators may be frightened out of making transactions on the basis of these probabilities by the action of a few men. If two or three dealers of known ability and financial strength persistently sell any commodity, say wheat, in the face of "bullish" indications, they may succeed in causing a fall in price. This is simply because the bull element is not very confident itself as to the realization of the predicted conditions, and because it fears the shrewdness and strength of these operators more than it trusts the predictions. Here is a clear case of "scare," and as a consequence the market is "manipulated" by the stronger party.

That prices are sometimes thus manipulated, possibly to the great detriment of the trade at large, is beyond question. But let us consider the result. On the one hand actual conditions may prove the short-sellers to have been right in anticipating an unexpected large supply — in which case they have only put the price where it ought to have been, and, however selfish their motives, have performed a distinct economic service and reaped the reward of superior sagacity or luck.[1] But it may be that subsequent events prove that the price made was too low. In this case the low prices are only temporary. As soon as the real conditions are known, the price will rise. The shorts may prove shrewd enough to cover all their contracts before this time arrives, but in almost every case the tide turns too quickly and their frantic attempts to cover before it is too late only aggravate the result. The price goes up (probably

[1] At the time that the anti-option measures were being agitated in 1892, there was still much excitement over the then recent action of Mr. Pardridge, of Chicago, in selling large quantities of wheat and keeping the price down in the face of the unanimous opinion of statistical authorities that there was to be a shortage in supply. This seemed a flagrant case of unwarranted depression of price. Mr. Pardridge, however, happened to be right. It was later admitted by the same authorities who predicted a shortage that there was wheat enough and to spare; and that Mr. Pardridge, whatever he thought he was doing, had only "made" the price what it ought to have been. See "The Utility of Speculation" by Mr. A. C. Stevens, POLITICAL SCIENCE QUARTERLY, VII, 419.

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to an extreme in the other direction), and the shorts are bankrupted because they attempted a manipulation that was not warranted by actual supply and demand. They sold their "wind" and they reaped the whirlwind. There has been a temporary disturbance of prices, and those who could not postpone their dealings have suffered thereby. Then equilibrium is restored and normal business continues.

But the fact that these manipulations are the exception and are only successful when in agreement with actual future conditions, does not make them a matter of slight concern. To what, however, is the evil due? Not to any lack of restriction, but to a lack of competition. It is not the speculative machinery that causes the evil, but something that obstructs its working. Instead of keen competition on the side of the bulls, and the ready buying that is warranted by the facts of the case, we find a weak surrender to the bear forces. What is wanted to stop bear manipulation is not statutes, but bull intelligence and courage. But manipulations are not always attempted for the purpose of lowering prices. At times the price may be put above its normal point by just such tactics as we have described. In this case the cure lies in strong action by the bears, *i.e.*, by vigorous short-selling.[1] Here the restrictions proposed would prove disastrous. If the short-seller is suppressed, the competitive action of the market is destroyed, and the chief obstacle to corners and bull manipulations of all kinds is removed.

All speculation is in a sense manipulation. It is by the equalization of the manipulation on the opposite sides that the correct price is fixed. The evils arise when the manipulation of one side is not equalized by that of the other. The more perfect the speculative system, the less likely is an unwarranted influence by either bulls or bears, and the less possible does all manipulation become. Not only is this true theoretically, it is

[1] When short-selling has gone too far, that is, when the market is "oversold," we have the best condition for a corner. This means that the shorts have sold more than they can deliver, and as is always the case with those who act contrary to actual conditions, have wrecked themselves in consequence.

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true historically. It is a common saying that only a rash man will to-day attempt to corner the market. And though corners are still attempted and manipulations of various kinds are occasionally successful, the possibility of such success is constantly decreasing as speculation becomes more and more extended and more perfectly organized. Great evils there must be; for there are great evils in all competitive business, and in speculation the good and the bad elements of ordinary business are intensified. In the speculative field, as in all industry and trade, mistakes of judgment, due to imperfect knowledge and limited intelligence, cause disaster and loss. The remedy for the evils of competition is no other in the case of speculation than in the case of other business. It is to be found not in outside interference with the machinery of speculation, but in the growing knowledge and intelligence of the speculative class.

III.

The purpose of this article has been to show that anti-option legislation is a blow at an essential part of the modern machinery of commerce. It is avowedly an attempt to suppress the short-seller, on the ground that he regularly depresses prices regardless of supply and demand, and thus deprives the farmer of a fair price for his product. If the position taken in this article is correct, the short-seller has no such influence on price, but is, on the contrary, a necessary part of the speculative system. Under this system prices are determined by the keenest competition of rival dealers. This involves all the evils of business strife under a competitive régime. But no other way of making prices than by competitive buying and selling has yet been devised. The advantage of such determination of the prices of future goods is, once more, that it relieves ordinary trade of its speculative element, concentrating the risks on a single class; while by this means the widest knowledge and keenest intelligence are brought to bear on the direction of productive and distributive forces into their most advantageous channels.

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That there are enormous evils in speculation as carried on to-day, in stocks even more than in produce, is beyond all question. It is a desire to see these suppressed that has given popular support to the Hatch and Washburn bills. But these bills strike at the benefits as well as at the evils of the system. The problem of checking the evil while retaining the good is one of the gravest questions with which the people may soon be called to deal. These evils are, in the first place, those arising from the low plane of morality among many brokers and speculators. The system is honeycombed with corrupt practices. The mad desire to turn the market in one direction or another leads to tricks and deals of every degree of dishonesty. "Wash sales," irresponsible "curb-trading," affiliation with bucket-shops, rumor-mongering, the secrecy in regard to "unlisted securities" on the stock exchanges, and the scandalous inside manipulation of such securities — these and other practices are a disgrace to the exchanges which permit them to flourish. They are, however, due not to the system, but to the dishonesty of men. How far government intervention would prove a benefit is a grave question. The duty lies primarily at the door of the able and honorable men who form the best element in all the exchanges. If these men cannot control the evils, we may find a repetition of the experiences of the "Granger" railroad legislation. That legislation was costly and disastrous, but it taught the lesson that the people can and will interfere. Whatever the legal status of the exchanges may be, economically they are quasi-public institutions, and as such have public duties. It would be lamentable for them to remain blind to these duties so long as to bring down unreasoning Populistic legislation on their heads.

The other great evil of speculation is its extension throughout the country. It is not the great speculators, but the numberless small speculators, who are the social curse. The record of defaulting cashiers and trustees that comes up from every corner of the land, shows how far this evil has extended. To what extent, however, the evil can be overcome by legislation is another serious question.

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These questions are assuming great practical importance in Germany, where a recent imperial commission has investigated the whole subject of speculation. This commission is emphatic in its recognition of the commercial necessity of dealings in futures (*Terminhandel*) and of the machinery to make such dealings possible. But it aims at suppressing the real evils of which we have been speaking, without destroying the system itself. Governmental supervision of exchanges is recommended as a possible check on dishonest practices. The interests of the investing public are to be represented on the managing boards of the stock exchanges, and the interests of the producing class on the produce exchanges. All persons trading through brokers on the produce exchanges are to be registered, and brokers are to be held liable for trading for any person not so registered. Speculation in behalf of clerks, officials and employees is to be strictly forbidden; also speculation for any one whose solvency is known to be endangered by the transaction. Brokers guilty of breaking these regulations are to be liable to expulsion or even imprisonment.[1]

The commission itself was by no means unanimous in its belief in the efficacy of such regulations, if put in practice. Still more may the practicability of such paternal measures in this country be doubted. But if a blow is to be struck at the evils of speculation, a lesson may well be learned from the report of this commission. The projected German reform aims at correcting the evils, while recognizing the benefits of the speculative system. The projected legislation in this country embodies a blind attack on the important economic functions of the system. The former effort must arouse universal sympathy. The latter can only call forth opposition and alarm.

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[1] Bericht der Börsen-Enquete-Commission, Berlin, 1893.

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MUNICIPAL ELECTRIC LIGHTING IN CHICAGO.

THE electric-light plant operated by the City of Chicago had its origin in an attempt to mitigate the "bridge nuisance." Ex-Mayor John A. Roche, in a letter dated June 3, 1887, proposed to the city council the establishment of an electric-light plant for the purpose of lighting the river from Halsted Street to the lake by arc lamps, in order that the bridges might be kept closed during the day, and be opened for the ingress and egress of vessels only from midnight to six A.M. In accordance with this suggestion, the city council, after due consideration, ordered the necessary steps for such purpose, and a plant operating 105 arc lamps, placed along the river according to the instructions contained in the ordinance, was installed at the corner of Washington and Clinton streets, on December 24, 1887.

While the project of lighting the river was still under consideration, the extension of the system was proposed. Out of this proposal and the discussion which followed grew an order, passed October 24, 1887,

> that the superintendent of the fire alarm telegraph prepare and submit to the city council within two months an estimate of the cost to the city for procuring the necessary plant and supplying electric lighting by the year for the streets and population between the lake, Halsted Street, Chicago Avenue and Twelfth Street.

The idea indicated in this order has been gradually put into practice so far as the lighting of the streets is concerned, but the city has not yet undertaken to supply light to private consumers. The gradual extension of the system may be seen from the numbers of lamps operated in successive years: 1887, 105; 1888, 297; 1889, 669; 1890, 929; 1891, ——; 1892, 1027; 1893, 1110.

At the close of the year 1893, Superintendent John W. Barrett made a detailed analysis of the expenditures during

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the year in operating the 1110 arc lamps which were maintained by the city. Mr. Barrett is in charge of the city telegraph connected with the fire department of the city, and by virtue of that fact exercises a general superintendence over the city's electric-light plant. His analysis, an abstract and *résumé* of which is published in connection with his report to the fire marshal of the city for the year 1893, is concerned only with the money outlay of the department, and fails to take into account the various items of superintendence and office expense, water expense, interest, taxes, insurance and depreciation. Concerning the last item Mr. Barrett writes, in a letter addressed, under date of June 5, 1894, to Major H. Elliot, Colonel of Engineers, U.S.A., Washington, D.C.:

> In regard to depreciation I beg leave to state that in a city like this it is extremely difficult to arrive at any fair percentage which should be charged up for depreciation. As one example why it is difficult, I refer you to page 151 of the report [of the fire marshal for 1893], where you will find that we disposed of a building, engines, dynamos and other apparatus at cost price (after they had been in service several years), and the land on which they were located at about twenty-five per cent more than its cost price.
>
> We *must* keep all of our apparatus in good working order, so that it is practically as good as new; so taking everything into consideration, we do not allow anything for depreciation.

What is said in this extract about the sale of apparatus at cost price is true enough, but it is somewhat disingenuous; for the plant there spoken of was condemned at the instance of the Metropolitan Elevated Railway Company of Chicago, and sold to them for the purpose of completing their right of way. It is evident that the consideration received from such a sale offers no very sure index to actual value. When it is borne in mind that dynamos of the best patterns known ten years ago are to-day worth little more than their value as old iron, and that within the last four years there has been a fall of at least twenty or twenty-five per cent in the price of such apparatus, it is evident that some allowance should be made for depreciation. Competent engineers and managers of electric

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apparatus — men acquainted with both the sale and the management of dynamo-electric machinery and with electric lighting — agree that the minimum depreciation ought to be estimated at ten per cent per annum, and that for steam-generating apparatus and engines the allowance for depreciation should be at least five per cent per annum.

It is the purpose of this paper to make allowance for the various neglected items before-mentioned, and thus to get an estimate of the cost to the city of its electric lighting under municipal management, in a proper form for comparison with the cost under private management.

The expenditure for coal at the four power-stations operated during 1893 was $28,509.87, or a monthly average of $2,375.82. The coal used ranged in price from $3.50 per ton for Hocking Valley nut to $1.65 per ton for Indiana block screenings. Estimating the average value at $2.50 per ton, and the evaporating power at seven pounds of water per pound of coal, the average monthly consumption of water would be 1,592 M gallons approximately. The city charges for water supplied in such quantities 10 cents per M for the first 165 M gallons and 8 cents per M for all used after the first 165 M. At this rate the value of the water evaporated by $2,375.82 worth of coal at $2.50 per ton, is $130.65, or five and one-half per cent of the value of the coal. At this rate the allowance for water consumed during the year should be $1,567.92, or an average of 1.41\frac{682}{1110}$ per lamp per year.

The value of the plant, as given in the letter to Major Elliot before referred to, was, on December 31, 1893, $688,312.80. At about the beginning of the construction of this plant the credit of the city was such that a large issue of 3½ per cent bonds was sold at 102$\frac{78}{100}$. Assuming that a smaller 3½ per cent issue of, say, the value of the plant, might have been floated at par, the allowance per annum for interest should be $24,090.95, or an average charge per lamp of 21.70\frac{395}{1110}$ per annum.

The aggregate of city, county and state taxes levied in Chicago amounts to nearly eight per cent per annum of the

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assessed value. The assessed value is estimated to be about one-tenth of the market value. Estimating the taxes, then, at three-quarters of one per cent of value, the tax charge on the electric light plant for 1893 would have been $5,162.35, or an average per lamp of 4.65\frac{085}{1110}$.

The value of housed property, as given at the close of 1892 in the comptroller's report for that year, was:

Buildings	$66,987.13
Steam plant and tools	95,518.79
Dynamos	58,075.00
Supplies on hand (1893)	8,840.40
Total	$229,421.32

Estimating fire insurance premium on this at one and one-half per cent on half valuation, an allowance of $1,720.66 should be made for insurance, or 1.55\frac{016}{1110}$ per lamp per year.

The depreciation on $95,518.79 worth of steam plant and tools at five per cent per annum would be $4,775.94, or an average of 4.30\frac{294}{1110}$ per lamp per year. The electric plant included the following items:

Dynamos (1892 invt.)	$58,075.00
Lamps (1893 invt.)	41,241.77
Underground circuit (1893 invt.)	164,495.20
Conduit system (1893 invt.)	152,552.91
Total	$416,364.88

At ten per cent per annum, depreciation would be $41,636.49, an average of 37.51\frac{039}{1110}$ per lamp per annum.

To Mr. Barrett's reported expenditure of 96.64\frac{753}{1110}$ per lamp per annum there should then be added the following items:

Water	1.41\frac{682}{1110}$
Interest	21.70$\frac{395}{1110}$
Taxes	4.65$\frac{085}{1110}$
Insurance	1.55$\frac{016}{1110}$
Depreciation of steam plant, *etc.*	4.30$\frac{294}{1110}$
" " electric plant	37.51$\frac{039}{1110}$

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The total is $\$167.78\frac{044}{1110}$, which is nearly the proper amount for comparison with the cost of electric light furnished by private companies. This amount ought to be increased by the average expenditure per lamp per year for book-keeping and other office expenses, and diminished by the average increase in valuation of real estate per lamp per year, and the accrued interest on the allowances for depreciation. As the allowance for depreciation per lamp per year in this computation is $41.82, the interest on it ought nearly to balance the office expenses, and our total expense of $167.78 would then have to be reduced only by the average increase in the value of real estate per lamp. As no satisfactory means of determining this is at hand, it is impossible to say just what allowance should be made; it could hardly be more than $2.78 per lamp per year, however, so that we may quite safely conclude that the total expense to the city for each lamp it operated in 1893 was at least $165.00.

For arc lamps rented of various lighting companies of the city $175 per lamp per year was paid in 1892, and $137.50 per lamp per year in 1893. The estimated cost to the city of the lamps operated by the city plant in 1892 was given in the comptroller's report for that year as $102.50; this presumably was obtained in a manner similar to that by which the estimate of $96.65 was obtained in 1893. As the plant operated in 1892 was nearly as valuable as that operated in 1893, and the number of lamps (1,027) somewhat less, the actual expense in 1892 must have been rather more than $171 per lamp. It is thus extremely doubtful that the city has saved any money by operating a plant of its own prior to 1893, and it seems very probable that the expense of operation in 1893 considerably exceeded the amount paid for hired lamps.

This, however, is not saying that the experience of the City of Chicago goes to show that the municipal operation of electric light plants is necessarily uneconomical. It is impossible to say just what influence the fact that the city owns and operates an electric-light plant has had upon the rates demanded by private companies for city lighting; and further than this, the

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full utilization of the city plant would materially reduce the expense per lamp operated.

To estimate the reduction in the expense per lamp secured by the full utilization of the plant, I have proceeded thus: The aggregate horse-power of the steam engines used in the various plants in 1893 was as follows:

Plant No. 1 . . .	500
No. 4 . . .	425
No. 6 . . .	625
No. 8 . . .	375

The number of lamps operated from these various plants was:

No. 1 . . .	350
No. 4 . . .	307
No. 6 . . .	354
No. 8 . . .	99

The expenditures at these various plants were, including computed value of water consumed (computation being effected by adding five and one-half per cent of the value of the coal consumed):

No. 1 . . .	$33,636.67
No. 4 . . .	27,676.28
No. 6 . . .	34,227.01
No. 8 . . .	13,305.89

Assuming that these expenditures may each be divided into two portions, one of which is proportional to the capacity of the plant, the other to the number of lamps operated, the first being represented by $\$a$ per lamp, and the second by $\$b$ per lamp; and assuming further that we may take the lamp capacity equal in number to the horse-power capacity, we have, taking approximate values of expenditures, $\$(500a + 350b - 33637)$ as the error for given values of a and b in the case of the first plant. Now, making use of the rule of least squares, we have that those values of a and b are to be preferred, which make

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$$(500a+350b-33637)^2+(425a+307b-27676)^2$$
$$+(625a+354b-34227)^2+(375a+99b-13306)^2[=\phi(a,\ b)]$$

a minimum. In order that $\phi(a,\ b)$ may be a minimum, $\frac{d\phi}{da}$ must $=0$, and $\frac{d\phi}{db}$ must $=0$.

$$\frac{d\phi}{da}=1{,}923{,}750a+1{,}127{,}700b-109{,}924{,}850.$$

$$\frac{d\phi}{db}=1{,}127{,}700b+703{,}732b-67{,}406{,}268.$$

Putting $\frac{d\phi}{da}=0$, and $\frac{d\phi}{db}=0$, and solving for a and b, we get $a=16.365686+$, and $b=69.581953+$, thus making a total cost per lamp per annum of $85.95 when plant is fully utilized, and only water expense is included besides those items taken into account by Mr. Barrett. These empirical values, when applied to the case of 1893, give a total expense of $105.97, too small by an average of a trifle less than 9½ cents per lamp. If the result $85.95 be increased by 10 cents, we shall then have $86.05 as the cost per lamp per annum, exclusive of interest, taxes, insurance, depreciation, office expense, change in value of real estate and interest on depreciation allowance.

To secure this complete utilization, I have estimated that the plant would have to be increased as follows:

810 posts, hoods, &c.,	@ $55.00 . .	$44,550.00
100-light dynamo,[1]	" $22.91⅔ . .	2,291.66
700 lamps,[1]	" $27.9793 . .	19,585.53
Total		$66,427.19

This would involve the following increased charges:

Interest on $66,427.19, @ 3½% per annum .	$2,324.96
Taxes " " " ¾ of 1% per annum	498.20
Depreciation on $21,877.19, @ 10% per annum	$2,187.72
Insurance on $2,291.66, @ ¾ of 1% per annum	17.19
Total	$5,028.07

[1] Prices at which the Western Electric Co. recently contracted to supply Detroit.

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The previous total estimate for interest, taxes, insurance and depreciation, $77,386.39, being increased by $5,028.07, gives $82,414.46, the total estimated allowance for these items in case the plant were to be fully utilized. This sum divided by 1,925 gives $42.813 per lamp per year; $86.05 increased by $42.81 gives $128.86 — a value probably very close to the expense per lamp per year if the city plant were to be fully utilized. This, in comparison with $167.78, shows the saving that is to be effected by fully utilizing the plant.

Disinterested electricians and engineers with whom I have talked seem to be of the opinion that the plant is efficiently managed. Business principles seem to be observed in the maintenance of the *personnel* of the force, and although there is some slight reason to think that the finger of the alderman can occasionally be seen in the appointment of the less skilled workers, such as firemen, linemen and laborers, I have not heard it asserted that the efficiency of the force is thereby impaired, or that inefficient men are retained on account of the manner of their appointment.

The only questionable part of the management so far discovered is the practice of inventorying all property at cost price, thus omitting all consideration of depreciation in efficiency of apparatus and further depreciation of value on account of fall in price, and presenting the appearance of greater wealth on the part of the city than it actually possesses.

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KOSSUTH: A SKETCH OF A REVOLUTIONIST. I.

I. *Early Hungary.*

IT is less than fifty years since the name of Kossuth, the leader in the Hungarian revolution of 1848, who lately died in voluntary exile at Turin, was as familiar as a household word. The cause of Hungarian independence aroused an intense interest. In Europe, it excited both hope and alarm; in America, it enlisted the sympathy of the people to an extent that was unprecedented. It appeared at a time when the spirit of democracy, which distinguishes the political and social development of the nineteenth century, was especially active. All Europe seemed to be in a democratic ferment. Paris, Vienna, Frankfort, Berlin and all parts of Germany and Italy were in a state of revolutionary commotion. Hardly a throne on the continent seemed safe.

From the foundation of the Magyar throne at the opening of the eleventh century, when Stephen I, generally known as St. Stephen, was crowned as king in the cathedral at Gran, till the beginning of the fourteenth century, Hungary was an independent kingdom ruled by native princes. Lineally descended from Almos, the barbarian chief who, in the latter part of the ninth century, led the Magyar incursion into the land of the Huns, Stephen was the great-grandson of Árpád, by whom the conquest of Hungary was completed. He not only founded the monarchy, but he gave a system of laws to the people, and powerfully contributed to the establishment of Christianity. For his coronation the Pope sent him a crown of gold, and his assumption of the royal dignity was celebrated with striking ceremonials.

Soon after his coronation Stephen granted to the great nobles of the country a constitution. He appointed a Palatine, or arbitrator, between himself and his subjects. He divided his

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country into districts, over each of which he placed an administrator with civil and military functions, and he defined the powers of the National Diet, or Parliament, which had first been convoked by his great ancestor Árpád. The reign of St. Stephen was glorious in the history of the country, and his sacred crown was handed down from ruler to ruler both as a symbol of authority and an object of veneration.

The government of the country was, however, by no means an easy matter. Wars internal as well as foreign disturbed the land, and in the course of the two hundred years succeeding the establishment of the kingdom, the royal prerogatives grew till the power of the crown became practically absolute. At last the Magnates, or great nobles of the kingdom, invoked the interposition of the Pope, and in 1222 he granted the Golden Bull, which is generally referred to as the *Magna Charta* of Hungary. It provided that the nobles and their possessions should not for the future be subject to taxes and imposts; that the nobles and franklins (the freemen employed to defend the fortified castles of Hungary), though bound to perform military duty at their own expense, should not be forced to go beyond the frontiers of the country, and that in case of foreign war the king should pay the troops of the several districts; that the king should not entail whole counties or high offices of the kingdom, or farm out the domain, the taxes, the coinage or the salt mines; and that no noble should be accused, arrested, sentenced or punished for crime, except in accordance with law.

The concessions of the crown failed to bring permanent content. Many of the Magnates who had profited by the usurpations of the king were indisposed to yield what had unjustly been granted them; and the rule of Bela IV was so severe that at one time the nobles started a revolt. In 1301, by the death of Andrew III, the native line of Árpád came to an end, and for many years thereafter the history of the country presents a succession of dynastic struggles. Prior to that time such struggles had taken place, but after the end of the Árpád line they became chronic. More than once the golden crown of St. Stephen was carried to foreign lands by its temporary

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possessor, and in 1526 it passed finally into foreign hands. In that year King Louis II was killed in battle with the Turks. He was the last prince to wear the crown of St. Stephen as that of an independent kingdom.

It has often been said that with the death of Louis II the struggle in Hungary between despotism and constitutional liberty began; but the government had always been aristocratic, and the rule of some of the kings had been notoriously despotic. The great mass of the people were substantially in a condition of serfdom. It is true that the country, though it sometimes fell under the power of invaders, had never been subjugated, and thus had retained its constitutional independence. But the issue between liberty and despotism did not begin with the assumption of the crown by the House of Hapsburg; it only changed its form and became more pronounced.

After the death of Louis II an armed contest for the throne of Hungary took place between John Zápoyla, waywode, or governor, of Transylvania, and Ferdinand, Duke of Austria. Zápoyla claimed the throne by virtue of his election by a diet sitting at Stuhlweissenberg. Another diet, sitting at Pressburg, and comprising some of the most eminent nobles, elected Ferdinand, who was the brother of the Emperor Charles V. Ferdinand was closely connected with the royal house of Hungary. Louis II had married his sister, and he himself had married the eldest daughter of Uladislaus, Louis's predecessor. Zápoyla actually gained the throne, but the war was kept up by Ferdinand till 1539, when a treaty was concluded under the mediation of the emperor, by which Transylvania, together with a part of Hungary, was left to Zápoyla, while the rest of Hungary was transferred to Ferdinand. Subsequently, the crown of St. Stephen and the crown jewels were delivered over to Ferdinand, and the country came under the rule of a prince of the House of Hapsburg.

From this event proceeded certain inevitable results. It is not necessary to suppose that the princes of the House of Hapsburg were malevolent in their purposes, in order to

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explain the fact that under their rule Hungary lost many of the attributes of nationality. The interest of its kings was to consolidate an empire rather than to develop the independence of any of its parts. The office of German Emperor, though nominally elective, had become practically hereditary in the House of Hapsburg. In time the Hungarian crown, though originally given to Ferdinand by election, also became hereditary in that house. The Hungarian chancery was transferred to Vienna. Austrian troops were quartered in the kingdom. The country lost its fiscal independence. The diet ceased to be convoked except at long intervals. Hungarian Magnates were induced to live in Vienna, and were weaned from the land of their nativity and its interests. A large part of the Magyar population espoused the cause of the Reformation and became Protestants, but the influence of the Catholic sovereign, and sometimes his repressive interposition, were thrown into the opposite scale. Hungarian nationality, thus emasculated, promised to become a thing of the past. But it could not expire without a struggle.

II. *Hungary in 1848.*

In 1848 the Kingdom of Hungary embraced, in its widest sense, Hungary proper, certain annexed territories, and the principality of Transylvania. The annexed territories were (1) Slavonia, in which may be included the three Slavonian counties and the Slavonian military frontiers; and (2) Croatia, in which may be included the three Croatian counties, the Croatian military frontiers, and the Hungarian Littoral, or coastland, on the Adriatic. It will, however, be seen that the relations of the annexed territories and of Transylvania to the Hungarian kingdom formed a subject of controversy.

The population of Hungary proper was about 11,200,000; of the annexed territories, about 1,800,000; of Transylvania, about 2,000,000: in all, about 15,000,000. Of the total population, something more than a third were Magyars, who lived chiefly in Hungary proper. There was an almost equal num-

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ber of the Slavonic race, widely distributed in diverse branches through Hungary proper and the annexed territories. The Dacians numbered nearly 3,000,000, and the Germans 1,400,000. There were 245,000 Jews, 45,000 gypsies and about 30,000 souls of various races not specified.

In religion there were more than 8,000,000 Roman Catholics, and 2,500,000 communicants of the Greek Church. The Protestants numbered about 4,000,000, but they derived their principal strength from the predominant Magyar race.

The nobles of Hungary, who alone possessed political power, were divided into several classes. All were alike in that they enjoyed certain privileges, one of which was freedom from taxation; in other respects they widely differed. The first class, consisting of the titled nobles — princes, counts and barons — formed what we generally understand by the term nobility. These were the Magnates, or peers of the realm, who appeared of right in the Diet and formed its upper house. They could appear in the Diet, indeed, either in person or by proxy. The proxy, however, could sit only in the lower house, where he had a somewhat barren right to speak, but could not vote. The second class, consisting of the untitled nobles, fell into three subdivisions: (1) Those who possessed considerable landed estates, or who had studied law. From these the county magistrates and the delegates to the Diet were chosen; (2) the "half-spurred" nobles — small land-holders[1] who formed the mass of the electors; (3) the landless nobles, who did not possess the elective franchise, and who gained their livelihood in various bread-winning occupations.

It has been seen that in the time of St. Stephen, Hungary was divided into districts for purposes of administration. These divisions, which were known as counties, bore a closer resemblance, in their organization and government, to Swiss cantons than to English or American counties. The county assemblies, or congregations, as they were termed, declared themselves to be autonomous, and exempt from superior authority in the

[1] Including every one who possessed, as the Hungarians said, "a house and four plum-trees."

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management of county affairs. In each county there was a lord-lieutenant. In three counties this dignity was held *ex officio;* in seven it was hereditary; in the remaining forty-five it was filled by appointment of the crown. All other county officers and magistrates were elected by the people, that is to say, by the nobles who exercised the elective franchise; and in this, as in other matters of election, the vote of each noble, no matter what his rank or condition, was equal to that of any other qualified elector.

By an ancient law, it was made the duty of a lord-lieutenant to reside in his own county. In time this act became a dead letter. The lords-lieutenant were usually Magnates, or noblemen — men of rank and fashion as well as of fortune — who, in order to gratify their tastes, deserted their duties and lived permanently abroad, only paying their counties occasional visits, generally for the purpose of giving a banquet at an election. In order to remedy this evil, the government some time before 1848 adopted the plan of appointing nobles (as distinguished from Magnates, or noblemen) to the office of lord-lieutenant. In 1848 there were upwards of twelve lords-lieutenant of that class. But when Count Apponyi became Austrian chancellor in 1847, he sought to revolutionize the system of county administration, so as to increase the influence of the crown. By long continued usage, it had become an established custom in counties in which the dignity of lord-lieutenant was held *ex officio*, to appoint an administrator; and the same course was pursued in counties where the dignity was hereditary, whenever the lord-lieutenant happened to be a minor. Count Apponyi sought to extend to the whole kingdom this plan of appointing administrators. He persuaded most of the Magnates who held the dignity of lord-lieutenant virtually to abandon their offices by consenting to the appointment of administrators, whose salaries were paid from the royal treasury and who were in other respects under the control of the crown. In 1848 such administrators had been appointed in twenty-nine of the fifty-five counties in the kingdom.

The subject of county administration has been introduced

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in this place, as one of the most significant questions involved in the revolution of 1848. Other questions will presently be noticed. On one side was the Conservative Party, under the influence of the Magnates, which was not disposed to resist the influence of the crown. On the other side was the Liberal Party, anxious to preserve Hungarian nationality, and advancing step by step to the assertion of that principle. Of this latter party Louis Kossuth became the leader. It will be well to glance at his previous career.

III. *Kossuth's Early Career.*

Louis (Lajos) Kossuth was born in the village of Monok, in the county of Zemplén, Hungary, on the 27th of April, 1802. His father, Andreas Kossuth, was a lawyer, and the owner of a small landed estate. He was an untitled noble, not a nobleman, and of Slavic, not Magyar, descent, having sprung from an old Croatian family of which it is said that many members had been prosecuted for political offenses. In religion he was a Protestant.

Louis Kossuth received his first instruction from a Protestant clergyman. Subsequently he attended a school at Ujhely, but his scholastic training was completed at the Calvinist College of Patak, which was anti-Austrian in its traditions and filled with memories of Rákóczy, and at the Lutheran College of Eperies. He then adopted the study of law, and, after attending the courts for the requisite time and receiving his diploma, he returned to his native county and entered upon the career of an advocate.

His attention was early turned to politics. In 1832 he appeared in the National Diet as the proxy of a magnate. A reform agitation begun by the Diet of 1825 had then assumed a tangible form. During the session of the Diet in 1790, a committee had been established to consider the revision of the laws. The report of this committee was not made to the Diet till 1830, but, when it was finally submitted, it presented a definite and comprehensive plan of reform. In the Diet of 1825 Paul Nagy and Count Stephen Széchenyi appeared as

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champions of a program aiming to abolish the burdens of feudalism and to invest the mass of the people with political rights. These questions were still uppermost in the Diet of 1832, and again in the Diet of 1834, in both of which Francis Déak appeared as the most prominent champion of reform. During the session of the Diet of 1834, Kossuth may be said to have begun his active political career. One of the greatest difficulties under which the Liberal Party labored was that of informing the electors of the Dietal proceedings. As the members of the House of Deputies were not only elected but also instructed by the counties, it was essential that their constituents should be accurately informed of what took place. The official record of the daily proceedings was too voluminous for that purpose. Kossuth, therefore, undertook to publish a journal which should convey the substance of what took place, together with a free commentary on public questions. The title of this journal was the *Parliamentary Messenger*. In order to avoid a decree against printing the debates in the Diet, he adopted the expedient, following the example of Wesselényi, in Transylvania, of using a lithographic press. When the government signified its disapprobation of his enterprise by offering to purchase his press, he resorted to the employment of secretaries, and undertook to carry out his project under the guise of a written correspondence. His papers were then intercepted in the post-office, but he met this move by employing private carriers. The demand for the journal grew to enormous proportions. The spirit of the people was aroused, and the strength of the Liberal Party increased daily.

When the Diet adjourned in 1834, it became necessary to find a means of continuing the Liberal agitation, and of securing harmony in the action of the county meetings. For this purpose Kossuth undertook the publication of another written journal, the *Messenger of the Municipal Bodies*, in which he undertook, with the coöperation of correspondents in the several counties, to collect and disseminate, in a compact and intelligible form, the political news of the kingdom. The influence

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of the journal immediately became so pronounced, that the government ordered its publication to be discontinued. Kossuth refused; and the government, failing in its efforts to secure his arrest by the civil authorities, seized him on a charge of minor treason and confined him in the fortress of Buda. For two years he remained in solitary confinement, his trial remaining in suspense. In 1839 he was condemned to four years' imprisonment, but in April, 1840, he was released under a general amnesty to all political offenders.

After his release Kossuth did not long remain inactive. In 1841 Ludwig Landerer, a publisher of Pest, obtained a license from the government for the publication of a political paper, and invited Kossuth to become its editor. The government, adopting a conciliatory policy, gave its permission, and the journal appeared under the editorship of Kossuth with the title of *Pesti Hirlap*, or *Pest Journal*. Men of prominence, such as Bezérédy, Baron Joseph Eötvös and Colonel Pulszky were among its contributors, but the pervading spirit was that of Kossuth. In the summer of 1844, however, a difference with Landerer led Kossuth to resign the editorship of his paper, and he then retired from the journalistic field.

While in control of the *Pesti Hirlap*, Kossuth had endeavored to promote the organization of certain enterprises for the independent development of Hungarian resources. To the accomplishment of that design he now devoted all his energies. Savings banks were established, first at Pressburg, and then in the principal cities of the kingdom. An association was formed for the purpose of extending commercial relations with foreign countries. An effort was made to encourage the construction of railways. But of all his projects one of the most extensive and important was that for the formation of companies for the systematic promotion of Hungarian manufactures and commerce. For this purpose Kossuth advocated the policy of protection, and the use of Hungarian manufactures in preference to foreign. He sought to strengthen the commercial and manufacturing population, and thus to create a powerful middle class, which should be invested with political rights.

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IV. *The Diet of 1847–48.*

In 1847 Kossuth was elected a delegate from Pest to the National Diet. At a general assembly of the Liberals at Pest in March of that year, he had presented a draft of a public address, which, after some slight modifications by Francis Déak, was published as the Liberal program. Its tone was distinctly national. It declared the existing government of Hungary to be an alien government, from which no hope of relief could be entertained, and demanded further guarantees for the independence of the country. Among such guarantees, it included a responsible ministry, liberty of the press, the union of Hungary and Transylvania and publicity respecting public affairs. While these guarantees were mentioned as objects ultimately to be attained, certain other measures were specified for immediate proposal to the Diet. Among these were a general system of taxation for all classes, noble and non-noble, a reform in representation, equality before the law, and an alteration of land tenures. Hungarian interests, the address declared, could no longer be subordinated to those of the rest of the empire, nor could Hungary tolerate a system that would sacrifice her nationality to a so-called administrative unity.

The Diet was opened at Pressburg on the 11th of November by Ferdinand I, Emperor of Austria, who appeared before the Diet as Ferdinand V, King of Hungary. The post of Palatine having become vacant by the death of the Archduke Charles, the Diet by acclamation elected his son, the Archduke Stephen, to succeed him. The new Palatine was installed on the 15th of November, and on the following day certain royal propositions were read to the Diet. Ferdinand promised that the question of quartering troops should be taken into consideration; that the privilege of representation in the Diet should be given to the royal free towns and certain other corporations; that a reform should be made in the tenure of lands; that custom-house barriers between Austria and Hungary should be abolished; that means of communication should be improved; that the reincorporation of the Transylvanian coun-

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ties should be considered, and that a new code of criminal laws should be made.

These propositions provoked a heated discussion. The Conservatives were satisfied. The Liberals viewed the royal propositions with suspicion. The Conservatives were desirous of moderate reforms, in a manner tending to strengthen the ties between Austria and Hungary. The Liberals, while expressing loyalty to the imperial dynasty, wanted to make Hungary independent. The removal of the custom-house barriers was not desired by them. They considered these barriers one of the safeguards of Hungarian nationality, and declared that they would, if possible, "convert the tariff into a wall of brass."

On the 22d of November, a debate began in the Diet as to the response that should be made to the royal propositions. The Conservatives wished to limit the address to the usual expression of thanks. The Liberals contended that allusion ought to be made to national grievances, and especially to the recent nominations of county administrators. In support of this view Kossuth made a two hours' speech, which he concluded by reading an address embodying the sentiments of his party. While it contained an enumeration of national complaints, and protested against the new system of county administration, its principal feature was a demand that a Diet should be summoned annually to meet at Pest. This was declared to be a paramount necessity. The address was carried in the House, after a six days' debate, by a vote of 28 to 27 members, 26 counties voting for the motion and 23 against it. The delegate of Croatia was among the latter. The upper house refused to concur in the address, preferring the usual vote of thanks, and, if necessary, a reference to grievances in general terms. When this answer was returned to the House, a stormy debate ensued; and, on motion of Kossuth, the subject of the address was dropped.

In the middle of December the Diet adjourned for the Christmas holidays. It reassembled in January, 1848, and on the 14th of the month the lower house took up the bill

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for the reincorporation of the Transylvanian counties. Kossuth made a two hours' speech, which, to quote the words of an eye-witness,

> was listened to with profound attention, the popular orator only being interrupted by loud cheers from all parts of the House, as well as from the turbulent young jurisconsults in the galleries, whenever he relieved his dry statement of facts by an impassioned burst of his peculiar eloquence.

It was characteristic of Kossuth's speeches during this period that they generally seemed to transgress the bounds of the orator's intention. His eloquence was irrepressible. In its transports both the orator and his auditors were carried away. Nothing could be drier in its details than the question of reincorporating the three Transylvanian counties of Kraszna, Zaránd and Middle-Szolnok. Its history extended back to the sixteenth century and involved the examination of numerous diplomatic and other state papers. At one time the counties had sent delegates to the Hungarian Diet; but, in consequence of disputes between the Hungarian and the Transylvanian authorities, Charles III of Hungary, who was also Emperor Charles VI, by a royal decree incorporated the counties with Transylvania. In 1741 Maria Theresa gave her sanction to a Dietal act by which the counties were declared to be reincorporated with Hungary. This act was not executed. In 1792 a similar act was passed and received the royal sanction, but it too remained a dead letter. The Diets of 1825 and 1832 placed the non-execution of the act of 1792 among the national grievances, and in 1836 an act was passed by which it was declared that the counties were "fully and completely reincorporated in the Kingdom of Hungary." A royal rescript was sent to the Diet of Transylvania to command its coöperation, and the counties were summoned to elect delegates to the Hungarian Diet. The counties did not obey the royal summons, and the government pointed to this fact as an evidence that they were averse to reincorporation. Kossuth, on the other hand, relying on the representations of

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leading Liberals in the counties, declared that they were prevented by agents of the government from exercising their constitutional rights. He charged that when the royal summons was sent to Middle-Szolnok, the lord-lieutenant did not deliver it to the authorities; that when the county congregation assembled, he employed an armed force to prevent it from exercising its constitutional functions; and that for this apparently disloyal course, he was "promoted to the rank of privy councillor to the Prince of Transylvania, who was at the same time King of Hungary." In Kraszna, said Kossuth, the course of the government was quite as remarkable. In that county affairs were under the control of one of Apponyi's administrators, who had been notoriously subservient to the government. "This honorable administrator," declared Kossuth,

had the general congregation held in the court-yard of his house, and three barrels of wine placed before the chair, which he occupied as president of the assembly. By means of these three barrels of wine, he persuaded the congregation to pass a resolution to the effect that Kraszna had no wish to be reincorporated with Hungary, and therefore would not send delegates to the Hungarian Diet. It has thus happened that the numerous resolutions passed during fifty years of sobriety have been annulled in a moment of drunkenness. Still the government does not make any allusion to the steps taken by Kraszna during half a century, but appeals to this last resolution, founded on three barrels of wine. [Laughter and cheers.]

When we compare the data I have submitted to the House, and take into consideration the line of policy pursued by the government, how can we blame the reincorporated counties for not sending delegates to the Diet? These counties are perfectly aware that the Prince of Transylvania and the King of Hungary are one and the same person, and therefore that the will of the one cannot be opposed to the will of the other, both being identical. They see, nevertheless, that the Transylvanian government agitates, and that those who support this agitation, instead of being punished or reprimanded, are loaded with honors, while the Hungarian government looks on and suffers laws to remain unpromulgated, and the decrees of Royalty to be treated with contumely. . . . What need I say more? I have placed the facts before you. It is for you to draw

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the necessary conclusions from them. It will be for the nation to decide how long we are still to endure a government by whose unconstitutional acts the legislative, the executive and the judicial powers of the state have been utterly degraded. How long? Can I ask the question? Oh, if such acts can be any longer tolerated — tolerated, too, at a period when despotism quails before the renascent spirit of freedom, and nations benumbed into decrepitude, reacquire their pristine vitality, I shall despair of my country. [Enthusiastic cheers.]

On the 15th of January the lower house began the consideration of the Hungarian Language and Nationality Bill. No measure could have disclosed more clearly than this the obstacles that must be encountered in the attempt to hasten the establishment, over all the territory claimed by Hungary, with its great diversity of races, of a perfect nationality founded on Magyar supremacy. By the Hungarian language was meant the Magyar language. The bill declared that the Hungarian language should exclusively be employed as the official language in every department of state, civil and ecclesiastical, and in all the schools, colleges and universities of the kingdom. It was provided that for the space of six years, the Slavonian counties should be allowed to make use of Latin, and the Hungarian Littoral of either Latin or Italian, but only for local affairs. The Croatians were to be permitted to use Latin for local affairs, but otherwise the official use of the Hungarian language was to be obligatory upon them, even in their public schools.

Magyarism was represented in the lower house by the forty-six counties of Hungary proper; Slavism, by the three Slavonian counties and Croatia. The three Croatian counties had, however, only one vote. They sent two delegates to the Diet, but one of these sat in the upper house. The Croatian delegate denied the right of the Hungarian Diet to say what language should be used by the Croatian authorities for local affairs. That right, he contended, belonged exclusively to the Diet of Croatia; and he complained, as did also the Slavonian delegates, of the injustice of forcing the Croatian and Slavonian

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authorities to correspond with the Hungarian authorities in the Hungarian instead of the Latin language. The bill, however, was passed by a general outcry, though, on motion of Kossuth, it was provided that the Hungarian language, while it must be taught, need not be used as the exclusive means of instruction in the elementary schools.

When the third clause of the bill, requiring the use of the Hungarian language in all schools, colleges and universities of the kingdom, was under consideration, Goldbrünner, a German, the delegate of the free town of Schemnitz, sought to have an exception made in favor of the Schemnitz Mining Academy, a celebrated institution which was frequented by students from every country in Europe, as well as from America. He urged that, if the exclusive use of the Magyar language in the Schemnitz Academy should be insisted upon, the institution would soon be deserted, since foreigners who desired to acquire a knowledge of mining would not take the trouble of learning an isolated Oriental language, which in their future career would be of no service.

"If Hungarians," some one exclaimed, "are obliged to learn a foreign language when they frequent a foreign academy, why should not foreigners be obliged to learn Hungarian when they frequent an Hungarian academy?"

"But I defy you," replied Goldbrünner, "to find a professor capable of giving a lecture on mining and mineralogy in the Magyar language. You will first have to coin a number of technical words, which the language is totally devoid of."

"They shall not be wanted," replied the Magyars.

"You ought also to take into consideration," said Goldbrünner, "the pecuniary advantage which the town derives from the residence of such a number of students."

"Let the town of Schemnitz perish, so that Hungarian nationality be preserved," was the only answer Goldbrünner received.

On the 1st of February a joint session of the two houses of the Diet was held for the purpose of hearing read a royal rescript which the Palatine had brought from Vienna, on the subject of the appointment of county administrators. This re-

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script, while protesting that the appointment of administrators was not a violation of the constitution, promised that the exercise of the power should be reserved for "exceptional cases," and that as soon as certain "obstacles" had been removed, the lords-lieutenant should everywhere be restored to "the full exercise of their legitimate functions." Neither party was satisfied with this rescript. The Conservatives regarded it as too great a concession to public opinion. The Liberals were divided. Kossuth gave his support to a motion that the king be asked to restore the lords-lieutenant to the discharge of their functions during the pending session of the Diet. On this motion there was an equal division, two counties not voting. The vote of the Croatian delegate, who voted against the motion, was contested, and there was a scene of great confusion. Hot words passed, in consequence of which two duels were fought the next morning. Several days later a representation was carried, in which his Majesty was simply asked to restore the lords-lieutenant to their duties, and to commit the supervision of the counties to the vice-regal council, instead of to the Hungarian chancery at Vienna.

Another subject of far-reaching importance was that of taxation, which directly affected the privileges of the nobles. Though they were exempt from taxation, they had in time of war frequently consented to pay a specific sum levied on allodial property; and they had also voluntarily contributed large sums for public works. The Conservatives were, however, averse to subjecting the nobles to the regular payment of county rates. They proposed, instead, a tax to be levied exclusively on allodial property, in the nature of a voluntary contribution for public works, rather than of a permanent, compulsory exaction. Several years previously Kossuth had advocated this measure as a compromise. But since that time public opinion had made great advances. The Liberal program demanded equality of taxation. A bill to establish such equality was passed by the lower house; but the Magnates, while forced to profess an acceptance in principle of the payment of county rates by the nobles, refused to concur in the

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bill passed by the delegates, and proposed to postpone the subject till an act should be adopted for a reform in county administration.

Closely connected with the subject of taxation was the "urbarial" question. This question related to the commutation of the *roboth*, or *corvée*, a feudal exaction that bore heavily on the peasantry. The Hungarian serfs were emancipated in the fifteenth century by a royal decree, which was afterwards annulled. Subsequently, however, it was restored, and the condition of the peasants was further ameliorated by certain measures known as the urbarial regulations, which were introduced by Maria Theresa. In time the scope of these regulations was extended, and in 1840 an act was passed by the Diet to facilitate the commutation of the *roboth* by agreement of parties. Nevertheless, the situation of the peasantry continued to be most unfortunate. The minimum holding of a peasant was about twenty-five acres; the maximum, about sixty-five. For a full holding the duty of *roboth* required the tenant to work for the lord of the manor a hundred and four days in the year, or fifty-two days with a team, besides making roads and performing other urbarial services for the county. The lord also took a ninth of the natural produce of the holding, and the church a tenth. Moreover, it was on the property of the peasants that the county taxes were levied — on their land, their live-stock, or any other property they possessed, as the county magistrates might think proper. It was proposed to make the commutation of the *roboth* compulsory, and to indemnify the landlord for any temporary sacrifice of his interest that might be necessary. A bill to this effect was passed by the Delegates, but it was held in suspense by the Magnates on questions of detail, though they gave a general assent to its object.

Such were the various measures discussed by the Diet at Pressburg on the eve of the revolution.

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V. *The Hungarian Revolution.*

On Friday, the 24th of February, 1848, Louis Philippe was forced by a revolution to abdicate the throne of France. News of this startling event reached Pressburg on Wednesday, the 29th of the same month. The Diet had just been considering, in a leisurely manner and without unusual excitement, the bill relating to the representation of the free towns. The news from Paris produced a great sensation. Frequent conferences were held between the leaders of the various parties. It was felt that a crisis had been reached, and that the time had come for action. Count Stephen Széchenyi proposed that the Delegates should go in a body to the Palatine and request him to make known their wishes to the king. This proposal was rejected. On the 3d of March Kossuth moved a representation to his Majesty, which he introduced with a speech that produced a profound impression not only in Hungary but in Austria.

When [said Kossuth], at the very commencement of this Diet, the address to the throne was moved, I considered it my duty to enter into an examination of the state of our internal affairs, as well as of the relations between the government of Hungary and the Imperial House of Austria. . . . I expressed my conviction that the future constitutional existence of our country could only be secured by our king surrounding himself with constitutional forms of government throughout his dominions. . . . I further maintained that where our interests and those of the confederated peoples of the empire conflicted, our independence, our freedom and our well-being could be secure only upon the basis of a common constituency. I took a general survey of the lamentable origin and development of the bureaucratic system of government at Vienna. I reminded you how the fabric of its enervated power was reared upon the subjugated liberties of our neighbors, and as I recounted the consequences of this fatal machinery of government, and, looking into the book of life in which events reveal the history of the future, I pronounced, in the earnestness of truth and of fidelity to the reigning family, that he who should reform the system of the government on a constitutional basis and establish the throne upon the liberty of the people, would be the second founder of the House of Hapsburg.

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Since I pronounced these words, thrones sustained by statecraft have fallen, and nations which, but a few months back, could not have dreamed of the proximity of such an event, have recovered their freedom. But *we*, for the space of three months, have incessantly rolled the stone of Sisyphus, and my soul is oppressed with a feeling akin to despair to think that we should remain thus immovable. . . .

The suffocating vapor of a heavy curse hangs over us, and out of the charnel-house of the cabinet of Vienna a pestilential wind sweeps by, benumbing our senses and exerting a deadening effect on our national spirit. But, while hitherto I have been apprehensive because I perceived that the influence of the Viennese system had caused irreparable injury to our country, because constitutional progress was unsecured, and because during three centuries the contest between the absolutist government of the empire and the constitutional existence of Hungary has never been adjusted, and never could be adjusted without the abandonment of one or the other of those principles, my fears are not now for this alone. I am apprehensive lest the stagnant bureaucratic policy that prevails in the state councils of Vienna should lead the empire to destruction; and, while compromising the existence of our beloved dynasty, should also entail upon our country, which requires all its powers and resources for its own development, enormous sacrifices and an interminable succession of calamities. Such to me is the present aspect of affairs; and as such I consider it my bounden duty to call the attention of the honorable members to the evils that threaten our country. . . . When political changes occur, and the time for a peaceable adjustment has passed away; when the die is irrevocably cast, and we have neglected to give utterance to the free and loyal sentiments of representatives of the people; when matters have become so entangled that we have only to choose between submission and sacrifices whose end God alone can foresee — then will repentance come too late, and the Omnipotent Himself cannot restore moments wasted in inaction. If I, as a patriot, must share in this tardy repentance, I will at least not fail in my duty as a Delegate.

Kossuth closed his speech by reading, amid the greatest enthusiasm, the proposed representation to the king. It declared that the necessary reforms in Hungary could be accomplished only by means of a national government, independent of foreign influence, and responsive and responsible to

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the majority of the people; and that a responsible Hungarian ministry was the principal and essential guaranty of every measure of reform. This representation was adopted by the Delegates by acclamation, and was sent to the Magnates. On the same day the Palatine hastened to Vienna, in order to urge upon the government compliance with the Liberal demands.

On the 13th of March a revolution took place at Vienna. When news of the revolution at Paris reached the Austrian capital, great excitement had ensued and the funds had fallen twenty per cent. When reports came of the effects of the same news at Pressburg, excitement was transformed into action. Thousands of copies of Kossuth's speech were distributed through Vienna. The people, led by students from the university, demanded freedom of the press and the establishment of a constitution. After a brief and spasmodic attempt to put down the uprising by force, Prince Metternich, who was not supported in his repressive policy by the emperor, resigned, and the emperor announced his intention to convoke an assembly for the purpose of framing a constitution for the empire.

The uprising at Vienna in turn reacted on the course of events at Pressburg. A paragraph was added to the representation to the king, in express terms demanding liberty of the press, trial by jury and annual Diets at Pest. The address, as thus amended, was adopted in both houses by acclamation; and, instead of transmitting it through the Hungarian chancery, a deputation, of which Kossuth was a member, set out for Vienna on the 15th of March to lay it directly before the king. They were enthusiastically welcomed by the populace of Vienna, and were graciously received by his Majesty. On the 17th of March they returned to Pressburg, and on the following day the revolution seemed to be complete. The press was then quite free. The Delegates had resolved themselves practically into a constituent assembly, no longer voting by counties, but individually, each delegate, whether from a county, a free town or a cathedral chapter, casting a free vote. The Magnates adopted without dissent whatever the other

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house thought fit to pass. All urbarial services were abolished, with compensation to the lords of the manors; and it was resolved immediately to take into consideration various fundamental questions, including those of representation, taxation, land tenures and the organization of a national guard. In reality such organization was spontaneously taking place in all parts of the kingdom.

The revolution, however, soon passed beyond the control of its leaders. By the 20th of March regular government in the country had ceased to exist. In the larger towns, including Buda and Pest, affairs were directed by committees of safety. On the 23d of March the Diet at Pressburg adopted a bill for a responsible ministry, and immediately Count Louis Batthyányi, without having submitted the names of the members to the king, announced the formation of a cabinet, in which he himself was premier, Kossuth minister of finance and Déak minister of justice. This precipitate action was due to a message received the evening before from the committee of safety at Pest, who declared that unless the formation of a ministry was announced within twenty-four hours, the national guards would storm the arsenal at Buda and summon a national convention to meet at Pest without delay. Indeed, the Pest republicans, highly displeased at a provisional press law that had been adopted, had already declared that the Diet at Pressburg was not a popular assembly, and had demanded more energetic measures. Even Kossuth seemed for the moment to lose his popularity with them. In Pressburg, the people had quietly removed the imperial arms from the public works, leaving the black and yellow stripes on the doors and railings untouched; but at Pest they tore down the imperial arms and threw them into the street, and repainted the doors and railings with the national colors of red, white and green.

Count Batthyányi hastened to Vienna with the names of his ministers and the bill under which they were designated, in order to obtain for both the royal sanction. He was quickly followed by Déak, and by Prince Esterhazy, whose mission also was to urge concession. For a time the king hesitated, but

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the course of events at Pest overcame his reluctance. On the 31st of March the Palatine brought to Pressburg a royal message in which all the demands of the Diet were granted, though in language that betrayed an unwilling compliance. On the 11th of April the king came to Pressburg to dissolve the Diet in person, and its sessions were brought to a close.

Among the acts to which the king gave his approval was the comprehensive charter of the revolution, which the Hungarians hailed as the second Golden Bull. Besides establishing a responsible ministry, through which the power of the executive was to be exercised, this act conferred upon the Palatine the title of vice-regent, together with the right to exercise, in the absence of the king, all royal powers, except the appointment of certain high dignitaries of church and state and the control of the army outside of Hungary. It provided for annual Diets at Pest, and for the triennial election of the members of the lower house. A new basis of representation was laid, and the number of representatives from Croatia was raised to eighteen. The aggregate number of deputies for the whole Hungarian kingdom was fixed at 446. The franchise was extended to every man, being a citizen of Hungary and not disqualified by guardianship, domestic service or crime, who possessed real property in town of the value of 300 florins ($150), or from eight to ten acres in the country, or who had an annual income of 100 florins from land or investments; to every manufacturer and tradesman who had a factory or shop; to artisans who had fixed employment and at least one assistant or apprentice; and to professional men generally. The half-spurred nobles were permitted to retain the franchise, but it was expected that the privilege as such would be taken away from them at the next session of the Diet. Taxation was made equal as to all classes, and tithes and the *roboth* were abolished. County administration was placed temporarily under the control of committees, the autonomic rights previously possessed by the counties not being compatible with the new system; and it was provided that the delegates in the Diet should no longer act under instructions from their respective constituencies,

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All religions were placed on an equality. Hungarian vessels were to fly the Hungarian flag. But, of all concessions made one of the most important was that which placed the Hungarian military frontiers, with the Hungarian border troops, under the authority of the Hungarian minister of war. This was one of the most difficult demands to secure, but the position of Austria was critical. A popular uprising had occurred in the emperor's Lombardo-Venetian kingdom, and the imperial troops had been driven from Milan. On the 10th of April a public meeting was held at Pest at which a demand was made for the withdrawal of all Hungarian troops from Lombardy. The time was inopportune for resisting concessions to Hungary.

On April 14 the members of the ministry were received in Pest with great enthusiasm, and began their labors in the Hungarian capital.

VI. *The Declaration of Independence.*

Before the new government was fairly established, clouds began to gather on the horizon. The revolution that had just been accomplished only marked the beginning of the task of national consolidation. This task, owing to the diversity of races and the old conflict between Magyarism and Slavism, would have been difficult enough, if Hungary had been in a position to deal with it single-handed. But, situated as she was, she was dealing with subjects of her own sovereign who looked to him as Emperor of Austria rather than as King of Hungary, and who, in defense of their own ideas of national organization, were ready to assist him in opposing the national aspirations of the Hungarians. For many years there had existed an Illyrian party, whose favorite plan had been to form Croatia, Slavonia, Servia, Bosnia, Carniola, Istria, Carinthia and Dalmatia into a united Slavonic kingdom, and whose shibboleth was the national independence of Croatia. This movement, known as Illyrism, though at one time regarded with disfavor by Austria, had always been a menace to the aspirations of the Hungarian nationalists, and to this extent it had been

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encouraged rather than discountenanced by the Austrian government.

On the night of the 29th of March, 1848, there arrived in Vienna a deputation from the kingdoms of Croatia, Dalmatia and Slavonia. While professing a desire to continue under the Hungarian crown, they expressed a wish to remain true to the reigning dynasty and to preserve the integrity of the Austrian empire. They particularly asked that Baron Joseph Jellachich be appointed Ban, or governor, of the united kingdom; that a Diet be summoned to meet at Agram not later than the first of May, and each year thereafter in succession at Agram, Essek, Zara and Fiume; that a ministry responsible to the Diet be appointed; that their national language be used in the interior and exterior administration of the kingdom, as well as in public instruction; that freedom of the press, of creeds, of instruction and of speech be secured; that equality of all persons before the law, trial by jury and responsibility of judges be established; that taxes be made uniform and the *roboth* abolished; that their finances be freed from the control of Hungary; that a new union be made of Dalmatia, Croatia, Slavonia and the military frontiers; that national troops be permitted to remain in the kingdom in time of peace, and all foreign troops be sent out of it. Other requests were made of a minor character. The resemblance of these petitions to the demands of the Hungarians is too obvious to require comment.

The petition in relation to Jellachich was readily granted. Not only was he appointed "Banus of Croatia, Slavonia and Dalmatia," but he was made a councillor of state and advanced over the heads of a large number of senior officers from the rank of colonel to that of lieutenant-general — an advancement almost if not quite unprecedented in the imperial army. Jellachich, who was a native of Croatia and the son of an officer of rank, had early attracted the notice of the imperial family both by the precociousness of his mind and by his gallantry on the field. To his loyalty as a soldier of Austria, he added a determined hostility to Magyar supremacy. All the concessions asked for by the deputation, except the appointment of Jella-

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chich, were refused, on the ground of their incompatibility with the national claims of Hungary. The refusal, therefore, only served to intensify the flame of Croatian hostility to the Magyars.

In May an insurrection broke out among the Servians and Wallachs in southern Hungary, and, as the Hungarian national forces had not been organized, the hostile movement soon assumed alarming proportions. But there was still graver cause for apprehension in events that were taking place in Croatia. The question of Croatia was of vital importance to the new Hungarian nation; for in the possession of this Slavic kingdom was involved the control of the littoral claimed by Hungary on the Adriatic, and in the control of the littoral the commerce of the nation was at stake. It was to the port of Fiume, situate in that territory, that Hungary looked for her great emporium. Communication between Pest and Fiume lay through Croatia, and Croatia herself asserted a title to Fiume.

Several years previously, before he became a delegate to the national Diet and while the Illyrian movement was at its height, Kossuth, in the general assembly of the county of Pest, had proposed that a legal separation be effected between Hungary and Croatia. As he afterward declared, his proposal was received with universal disapprobation; even his best friends were offended at it. Political power once gained is seldom relinquished without a struggle. The Hungarians were not disposed to release their hold on Croatia. From the point of view of Hungarian nationality, they had not used their power tyrannically. The consolidation of the Hungarian nation required the curtailment of local independence everywhere, in the Hungarian counties as well as in Transylvania, Slavonia and Croatia. As compensation to the Croats for the suppression of their national independence, Hungary offered them a full participation in the fruits of the revolution. As individuals she gave them a larger measure of liberty than they had ever before possessed. That they should reject the boon of freedom tendered by Hungary and put themselves under

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the yoke of absolutism, was incomprehensible. Such a course bore evidence not only of misconception but also of a rebellious spirit, and it must be resisted — by peaceful measures if possible; but it must be resisted. Thus reasoned Kossuth in 1848.

The Croats took a different view. Political association is only in part a matter of reason or even of common interest. It is chiefly a matter of affinity. The world is ruled by sentiment. Nations are made by community of feeling, springing from similarity of race, language and creed. Without these there may be concert, but not unity. Compulsory association seldom breeds affection; and a benefit forced upon an unwilling recipient is likely to excite his resentment rather than his gratitude. In this spirit the Croats repelled the Hungarian advances. Not only did they differ from the Magyars in race and in language, but they differed in religion, nine-tenths of them being Roman Catholics and the other tenth being mostly of the Greek Church; nor did they relish the idea of being placed completely in the power of the Hungarian Diet, where they would always be outvoted. When, therefore, the government at Pest ordered the Croatian authorities to correspond with the Hungarian departments of state, they refused to do so. To this course they were counseled by Jellachich, who, when he was summoned to put himself in communication with the Hungarian ministry, not only disobeyed the command, but called a diet to meet at Agram in June. At the solicitation of the Hungarian government, an imperial communication was then sent to the Ban, directing him to place himself under the orders of the vice-regent.

In giving this direction, the imperial government seems to have been inspired by a desire to avert a crisis which might have caused the fall of the existing Hungarian ministry. Such was the motive disclosed by Lord Ponsonby, the British ambassador to Austria, who betrayed little sympathy with the Hungarian national movement. Apart from a dislike of revolutionary movements in general, his lordship, true to his instincts, was unfavorably impressed with the manner in which

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the Hungarian Liberals had interfered with the revenues of the great landlords. His statements, therefore, as to the motives of the Austrian court, may, in view of his personal predilections and his official relations, be received with consideration.

It is certain [said his lordship] that the Ban knows the reason by which the imperial government was moved, and it is believed, as well as hoped, that he will content himself with silent disobedience. He knows that the Hungarians are unable to enforce the order, . . . and therefore that no attempt will be made which will bring on a crisis. If this be so, time will be gained for an adjustment between Hungary and Croatia, which I presume must ultimately be accompanied by an abandonment of Hungarian pretensions.

In May the Austrian cabinet was reorganized, and General Latour was appointed minister of war. In the same month the imperial court was removed to Innspruck. Ferdinand, mild in disposition and upright in his intentions, was little adapted to the situation in which he found himself. Having granted the demands of the Hungarians, he was disposed to adhere to his engagements, but the court and the cabinet sought to reëstablish the supremacy of the empire, and the state of affairs in Croatia revealed a way to the accomplishment of their design. On the 16th of May, two orders were received at Agram from the Hungarian vice-regent. These orders were about to be destroyed by the people, when the Ban interceded; but the portraits of the vice-regent and his ministers were publicly burned in the piazza before the council house with the consent of the authorities. Ferdinand proclaimed the Ban a rebel and declared the diet at Agram to be dissolved. The Ban, supported by the Austrian court and cabinet, paid no heed to these condemnatory utterances, further than to intimate that, if he were arrested, he would recall all the Croatian troops from Italy. On the 29th of June Lord Ponsonby wrote to his government that it seemed to him "that the Ban and the Croatians might be instrumental in saving the empire."

On the 2d of July the new National Diet assembled at Pest. On the 11th there was enacted in it a memorable scene. On

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that day Kossuth brought forward his motion on the national defenses. Enfeebled by excessive labor and by illness, he moved slowly up the aisle supported by two deputies, and as he ascended the tribune the tumultuous applause with which his appearance was greeted was succeeded by the deep silence of expectancy. As he proceeded with his oration, his voice, at first feeble, became stronger and more distinct, and his strength seemed to be renewed.

Gentlemen [said he], in ascending the tribune to call upon you to save the country, I am oppressed with the greatness of the moment: I feel as if God had placed in my hands the trumpet to arouse the dead, that, if sinners and weak, they may relapse into death, but that, if the vigor of life is still in them, they may waken to eternity. The fate of the nation at this moment is in your hands; with your decision on the motion which I shall bring forward, God has placed the decision of the life or death of Hungary; and because this hour is so important, I have resolved not to use the weapons of rhetoric; for I cannot but believe, I cannot but feel convinced, however opinions may differ in this house, the sacred love of our country and a desire for its independence, honor and freedom is so general among us, that we would all be equally ready to offer the last drop of our blood for its sake. . . . Gentlemen, our country is in danger. It is, perhaps, enough to pronounce these words; for with the dawn of freedom, the veil of darkness has fallen from the eyes of the nation.

Kossuth then proceeded to sketch the situation of the country. He referred to the fact that a Russian army had entered Moldavia, where it might move as a friend or as a foe. The nation, he said, must hold itself prepared for either contingency. It was also necessary to consider the attitude of Austria. The disturbances in Croatia were evidently connected with the scheme of the Viennese ministers to reacquire control over Hungary. Such a policy they could not pursue without bidding defiance to Hungary; and he declared that, with the Austrian relations on the one hand, the state of the countries on the lower Danube on the other, the Servian insurrection, the Croatian rebellion, the Pan-Slavic agitation and other reactionary movements, the nation was placed in imminent peril.

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Nor was there any foreign alliance in which the nation could find protection and safety. England would assist only so far as she might find it consistent with her own interests. Poland relied on French sympathy: she received that sympathy; yet Poland was no more! Germany had taken her first step towards unity, but the Frankfort assembly was still struggling for existence, and was not yet sufficiently matured to enter into negotiations with foreign powers.

That nation alone [continued Kossuth] can survive, which has vital power within itself; but the nation which cannot be sustained by its own strength and is dependent on the assistance of others, has no future. I therefore call upon you, gentlemen, to form a generous resolution. Proclaim that, with a just appreciation of the extraordinary circumstances that have caused the Diet to be summoned, the nation has determined to make any sacrifice that may be necessary for the defence of the crown, of its own freedom and its independence. But in order to make this important resolution effective, and if possible to make an honorable peace or else to be victorious in battle, let the government be authorized to increase the effective force of the army to 200,000 men, and to that end immediately to equip 40,000 men, the rest to be levied as may be expedient for the safety of the country and the honor of the nation. . . . Gentlemen, I believe that the future existence of the nation depends on the resolution to be adopted by the House on this occasion, and not only on the resolution itself, but on the manner in which it is declared. To-day we are the ministers of the nation. To-morrow others may take our place: no matter. The ministers may be changed; but thou, O my country, thou must forever remain, and the nation itself, by whatever ministry it may be guided, must alone preserve thee! To do this, it must develop its strength. Therefore I here solemnly demand of this House a grant of 200,000 soldiers and the necessary pecuniary assistance.

At this point Kossuth paused, as if his speech had failed him. In a moment a delegate sprang to his feet and exclaimed: "We grant it." The house rose as a body and repeated his words.

The revolutionary party, of which Kossuth was the leader, was not content with the measure of independence already at-

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tained. Kossuth advocated the assumption by Hungary of the exclusive management of her foreign affairs, through her own ministers and consuls. He carried in the Diet, against the opposition of Batthyányi and Déak, an amendment to the address to the throne, prescribing certain conditions on which the grant of further aid to the imperial government in the war in Italy was made dependent. He also proceeded to carry out his financial plans by issuing one-florin and two-florin bills, which came to be known as the "Kossuth notes."

The last act in the drama of the revolution soon began. Under the mediation of the Archduke John, a conference was brought about at Vienna between Jellachich and Batthyányi, but they parted with expressions of mutual hostility. On the first of September the Ban entered and occupied the port of Fiume. The king not only refused to approve the bill passed by the Hungarian Diet for the raising of troops and money, but he intimated that he had exceeded his powers in making some of the concessions that had already been granted; and he commanded the Palatine to send some of the ministers to Vienna to consult as to the reconciliation of Hungary and Croatia, and as to the best means of preserving the integrity and unity of the empire. On motion of Kossuth, a deputation of the Diet was appointed to wait on Ferdinand and definitely ascertain his intentions. The response of the king was vague and unsatisfactory, and the deputies left Vienna, having hoisted the red flag and wearing red cockades and feathers in their hats. On the following day Jellachich crossed the Drave, the stream that separates Croatia from Hungary, and advanced toward Pest.

When the deputation returned to Pest, the ministry in a body resigned. The policy of reconciliation, which Batthyányi and Déak represented, appeared to the majority of the deputies to be no longer practicable. The Palatine put himself at the head of the Hungarian army, but, after a futile attempt to hold a conference with Jellachich, resigned and retired to Germany. Ferdinand, with a view to avoid a battle between the Croats and the Hungarians, appointed Count Lamberg com-

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mander-in-chief of all the forces in Hungary, including those under Jellachich, and invested him with full power to negotiate an amicable settlement. The Diet, led by Kossuth, declared that the appointment of Count Lamberg, which had not been countersigned by the Hungarian premier, was illegal. Lamberg, however, though warned of the prevailing excitement, proceeded to Pest, and, while driving in an open carriage on the bridge of boats from Pest to Buda, was killed by a mob, which dragged his body through the streets. This deplorable event was followed by an engagement between the Hungarian and the Croatian troops; and Jellachich, by a royal decree in which the preceding circumstances were recited, was appointed commander of all the forces in Hungary, its adjacent kingdoms and Transylvania, and royal plenipotentiary commissioner, with authority to take all measures within the limits of executive power.

The sympathy between the people of Vienna and the people of Hungary has already been noticed. The proclamation empowering Jellachich to move against the Hungarians was immediately followed by an uprising in Vienna. General Latour, the Austrian minister of war, was surprised and killed in his office, and his naked body was hung from a lamp post. The emperor and his family, under an escort of troops, fled the city. The arsenal was seized and looted. The assembly voted that the army should not be permitted to come within a certain distance of the city, and a deputation was sent to Jellachich, who was near Vienna, asking him to withdraw. Jellachich replied :

> The motives of his advance are those that he cherishes as a servant and soldier of the state. As a servant of the state, it is his duty to oppose anarchy ; as a soldier, the thunder of the cannon points him out his route. His object is to support the monarchy upon the principle of equal regard for nationalities. If he be attacked, he will repel force by force.

The defense of Vienna was undertaken by General Bem, a Polish officer who had served in the revolution in Poland of 1831, and who, with many other of his exiled compatriots

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called again into activity by the events of 1848, had hastened to espouse the cause of the revolution in Austria and Hungary. The command of the imperial forces about Vienna was now assumed by Prince Windischgrätz, who immediately announced that he was invested with civil and military power over the whole empire.

When, after the resignation of the Batthyányi ministry, the prospect of hostilities became certain, the control of affairs in Hungary was placed in the hands of a committee of defense, of which Kossuth was made president. Kossuth now urged that the Hungarian army should march to the relief of Vienna. By his appeals to the people he had collected an army of upward of 30,000 men, and on October 28 he crossed the Austrian frontiers. On the same day the suburbs of Vienna were stormed by the imperial forces and Prince Windischgrätz turned to intercept the advancing Hungarians. On the following day he met and defeated them at Schwechat. The municipal authorities of Vienna formally surrendered the city, and General Bem, escaping in disguise, joined Kossuth, while the command of the Hungarian army of the Upper Danube was given to General Görgei, who had at one time been an officer in the Austrian army.

Toward the close of November Kossuth applied through a personal friend to Mr. Stiles, the *chargé d'affaires* of the United States at Vienna, to ascertain whether he would employ his good offices for the settlement of the differences between Austria and Hungary. Mr. Stiles, though without hope of success, consented on grounds of humanity to make the attempt, with the understanding that his intervention, if accepted by the imperial government, would be confined to opening the door to reconciliation. On the night of December 2 a young lady, disguised as a peasant, arrived at the office of the American legation with a letter from Kossuth, with which she had traveled in an open cart, exposed to a snow storm, in order to escape suspicion and arrest. In this letter, which was signed by Kossuth as president of the committee of defense, and countersigned by Francis Pulszky as secretary

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of state, Kossuth requested Mr. Stiles "to initiate a negotiation for an armistice for the winter between the two armies standing on the frontiers of Austria and Hungary, and so to stop the calamities of a war so fatal to the interests of both countries." Mr. Stiles informed Prince Schwarzenberg, the imperial secretary for foreign affairs, of what had occurred, and the latter, while expressing the opinion that intervention was hopeless, advised him to confer with Prince Windischgrätz. Prince Windischgrätz received Mr. Stiles with the utmost kindness, but replied :

> I can do nothing in the matter ; I must obey the orders of the emperor. Hungary must submit. I will occupy Pest with my troops, and then the emperor will decide what is to be done. I cannot consent to treat with those who are in rebellion.

When this interview was held Ferdinand was no longer emperor. On the 2d of December, the day Kossuth's fair messenger arrived in Vienna, he abdicated the throne in favor of his nephew, the Archduke Francis Joseph — Francis Charles, the heir presumptive having renounced the succession. It had been determined by the court and the cabinet to reduce the Hungarians to submission. Jellachich was appointed governor of Dalmatia and Fiume, and Prince Windischgrätz proceeded to Hungary, where he encountered and dispersed a force of 5,000 men under General Perczel. The seat of the Hungarian government was then removed from Pest to Debreczen, which was further from the seat of war, and the command of the Hungarian armies was given to General Dembinski, a Polish officer who had fought under Napoleon, and who had acquired fame by his military conduct in the Polish revolution of 1831. On the 27th of January, 1849, however, he suffered defeat at the hands of Prince Windischgrätz, and shortly afterward he was deprived of his post.

On receiving news of the victory of Prince Windischgrätz, the emperor on the 4th of March proclaimed at Olmütz a new constitution for the whole empire. It abolished feudalism ; established equality of rights ; gave to each province of the

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empire, of which Hungary was treated as one, a diet; made Croatia and Slavonia independent of Hungary; declared the equality of nationalities; and created a *Zollverein* between the different parts of the empire. Kossuth maintained that this act, which involved the abrogation of the national concessions of Ferdinand, should be answered by a declaration of Hungarian independence. His associates, however, were not yet ready to take this step. The sentiment of loyalty to the crown was still influential with the people as well as with the army. But events were preparing the way for the final measure of separation.

While Prince Windischgrätz was pressing his way in Hungary, the Hungarians under Bem, in Transylvania, were winning a succession of remarkable victories, not only over the combined forces of the Austrians and Wallachs, but also over the Russians. The revolutionary character of the movement in Hungary, and the prominent participation in it of leading spirits in the Polish insurrection of 1831, had not failed to attract the attention of the Czar, as well as to excite his apprehensions lest the objective point of these recruits might be Galicia and Poland. He accordingly sent a force into the Turkish principality of Wallachia, with instructions to enter Transylvania and occupy the cities of Hermannstadt and Kronstadt, if the superior Austrian military authority there should request it; and when this force, the imperial armies having been defeated, entered Transylvania and occupied the cities in question, Bem attacked it and drove it back into Wallachia. The tide also began to turn in Hungary, where the army under Görgei won a series of victories and pushed on toward Pest. The national spirit, already greatly aroused by the intervention of Russia, rose higher yet under the stimulus of success. The idea of separation became popular.

On the 14th of April the National Assembly, sitting in the Protestant church at Debreczen, on motion of Kossuth, declared "Hungary with Transylvania, as united by law, with its dependencies, to constitute a free and independent sovereign state"; and that the House of Hapsburg-Lorraine, for having levied

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war against the Hungarian nation, destroyed the integrity of its territory, compassed the destruction of its rights, and called in the army of a foreign power to annihilate its independence, should be, "as treacherous and perjured, forever excluded from the throne of the United States of Hungary and Transylvania, and deposed, degraded and banished forever from the Hungarian territory." It was further declared that the adoption of a new form of government would be left to be determined by the Diet of the nation in the future. Meanwhile, affairs were to be conducted on the principle of personal responsibility, and Kossuth was unanimously chosen as governor of Hungary, with power to nominate a ministry.

The Hungarian successes continued. Though the declaration of independence produced serious discontent in a part of the army, reinforcements came in large numbers. There was hardly an unmarried Transylvanian noble, it is said, who had not entered the service. On the 19th of April, the Hungarians gained another decisive victory, and in less than a week they reëntered Pest. With the exception of a garrison at Buda, the country was abandoned by the imperial forces. Kossuth and others now desired Görgei to move on Vienna, the way being open and the city unprepared to resist. If the Austrian capital should be taken, perhaps the war might be brought to a close on Hungary's own terms. Görgei, however, instead of crossing the Austrian frontiers, turned aside to besiege Buda. After a siege of nearly a month the fortress was captured, and the government returned to Pest. This event was the subject of great rejoicing, but the fate of Hungarian independence was already sealed.

As early as November, 1848, Lord Ponsonby, in adverting to the advance of a Russian force in Moldavia, clearly foreshadowed the possibility of Russian intervention in the Hungarian contest. Austria had not, he was quite sure, asked the Czar for assistance, but the relations of the courts were most amicable; and he had little doubt that, if the Austrians should receive a severe check in Hungary, or be attacked in Italy by an enemy possessing the power to put the emperor in danger,

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the Czar would give to the latter his most efficient support. Up to this point the British government had maintained an attitude of non-intervention; and when, in December, 1848, an agent of Hungary arrived in London, Lord Palmerston refused to receive him. Subsequently, however, the British government watched the movements of the Russians as a matter affecting the rights of Turkey. With Lord Palmerston the subject of Turkish independence was a specialty; with Stratford Canning, then British ambassador at Constantinople, it was an infatuation; and they ardently pursued it till 1854, when the Ottoman patient, surcharged with anti-Russian potions, brought on the Crimean War. But their solicitude was not for the Turk himself; it was for Constantinople, the objective of Russian ambition.

When the Russian forces entered Wallachia with a view to intervene in Transylvania, Canning, supported by the French minister at Constantinople, advised the Porte that such intervention, from a principality of which it was sovereign, would be a grave infraction of its rights and of the neutrality which it had determined to observe. To this view Lord Palmerston unhesitatingly gave his approval. The Russians, however, entered Transylvania, apparently without protest from the Porte, but were driven out by what Count Nesselrode described as "the Hungarian rebels under the Polish refugee Bem." On the 24th of April, 1849, Palmerston advised Canning that Baron Brünnow, the Russian ambassador at London, had informed him that it "was not the intention of the Emperor of Russia, in consequence of the retreat of the Russian detachment from Hermannstadt, to order his troops to advance into Transylvania, or to take any part in the civil war now waging in that province or in Hungary." On the same day a letter was sent from the British legation in Vienna to Lord Palmerston, in which it was stated that the Austrian government, though it hoped to terminate the Hungarian conflict without Russian assistance, had decided to ask for such assistance, if it should be felt to be necessary. Two days later the Czar published a manifesto in the following remarkable terms:

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By our manifesto of March 14, 1848, we announced to our faithful subjects the calamities which had befallen the West of Europe. We at the same time expressed our determination to combat our enemies, from whatever quarter they might come, and . . . to defend, without reserve, the honor of the Russian name and the inviolability of our frontiers.

The troubles and revolts have not since abated in the West. The criminal seducements that gain over the unreflecting masses, in offering them the deceitful enticement of a felicity which can never be the fruit of license and anarchy, have penetrated even to the East in the principalities of Moldavia and Wallachia, subject to the Ottoman government and bordering on our empire. It is only by the presence of our troops and of those of Turkey that order has been reëstablished and maintained there. But in Hungary and Transylvania the efforts of the Austrian government . . . have not as yet been able to triumph over the revolt; on the contrary, this revolt, swollen by bands of our Polish rebels of 1831, and of adventurers, exiles and vagabonds of all nations, has attained the most menacing proportions. In these lamentable conjunctures, the Emperor of Austria has addressed to us a request for our coöperation against our common enemies. We shall not refuse it. After having invoked, in behalf of a cause so just, the assistance of the Lord of Hosts, who alone disposes of victory, we have given our troops the order to advance, in order to choke the revolt and destroy the rash and seditious persons who propose to assail the repose of our provinces. If God be with us, who is against us! Such are, we are certain, the sentiments, the views and the hope of every Russian, of every one of the faithful subjects in our empire, on which so visibly rests the Divine protection; and thus it is that Russia will fulfill her holy mission.

It is needless to pursue the story of the conflict further. The combined forces of Austrians, Russians, Croats, Servians and Wallachs soon numbered upwards of 300,000 men. The Hungarians, pressed on all sides and divided in their councils, suffered numerous defeats, and the government was again compelled to retire from Pest, first to Szegedin and then to the fortress of Arad. On the 11th of August Kossuth and his cabinet resigned the direction of affairs and invested Görgei with dictatorial powers. On the 13th Görgei unconditionally surrendered to the commander of the Russian forces.

JOHN BASSETT MOORE.

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THE ANGLO-SAXON COURTS OF LAW.

THOSE who are familiar with Mr. Adams's essay[1] on the above subject may deem the present article little more than superfluous. However, a careful reading of his work and that of others, not excluding Dr. Stubbs, has led me to believe that the fundamental questions have not yet been cleared up. There is still uncertainty as to the exact nature and extent of the jurisdiction of the public Anglo-Saxon courts and as to their composition. Fully aware that scantiness of material renders the investigation difficult, I hope, nevertheless, to throw some new light on the subject.

I.

Was there a clearly-defined tribunal in Anglo-Saxon times which might be called a king's court? There is no distinct mention of any as such in our sources. Still we have, in a few cases, indications of a direct intervention on the part of the king. In a curious document Ælfred is spoken of as ordering an arbitration to settle a dispute about land.[2] The plaintiff, not being satisfied with the decision, wished to see it ratified by the king. The parties then went into Ælfred's presence. He confirmed the previous decision, and declared that the defendant should be admitted to the oath on a certain day. And this term was kept. It is clear that this was not strictly a law case. Besides, the whole situation is too vague to admit of drawing a conclusion therefrom. But there is extant the record of a litigation in which King Eadgar figures as a judge at the head of his "þenning-manna gemot" in London.[3] Some

[1] H. Adams: The Anglo-Saxon Courts of Law: Essays in Anglo-Saxon Law, pp. 1–54.

[2] Kemble, Cod. Dipl., III, 328 (the reference is always to the number of Kemble's documents). *Cf.* Thorpe, Dipl. Anglic., pp. 169–174.

[3] Kemble, C. D., VI, 1258.

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stolen charters were adjudged to the plaintiff. However, there seems to be no reason to believe that we have here a king's court, but rather the witenagemot acting as the highest court of the kingdom. The relevant words of the document are :

This was at London, where was King Eadgar and Archbishop Dunstan and Bishop Æthelwold and Bishop Ælfstan and the other Ælfstan and Alderman Ælfere and *many of the king's witan.*[1]

Æthelred III, 11, where we read of the exclusive jurisdiction of the king over king's thegns,[2] probably refers to the action of the witenagemot. If the first part of the document cited shows us the king invested with but an undeveloped power of interference, the sequel reduces that power to a shadow. For on the king's death the suit was renewed in the shiremoot, which reversed the previous decision.

It would seem, indeed, that the witenagemot's decision was binding only where the parties had previously promised to abide by it.[3] This is clearly illustrated by the record of a land grant "before King Æthelred."[4] Although witnessed by the king and others, a third party who was concerned would not comply unless it were carried to the shiremoot ; to which the king refers it by his seal (*insegel*).[5] Another document tells

[1] Essays in Anglo-Saxon Law, p. 348. That witenagemots were not unfrequently held in London is proved by Kemble's list: Kemble, C. D., nos. 159, 196, 361, 528, 580, 702; Leges Eadmundi, Schmid, p. 172; Anglo-Saxon Chron., A.D. 1012, 1016, 1047, 1048, 1050, 1055, 1065; Florence of Worcester, A.D. 1044.

[2] And nan man nage nane socne ofer cynges þegen, buton cyng sylf. *Cf.* Spence, Equit. Jurisdiction, p. 76 (1846).

[3] Adams, p. 26.

[4] Kemble, C. D., III, 693.

[5] Compare a suit about land in the Historia Eliensis (ed. T. Gale: Scriptores xx, vol. ii, p. 469, c. x). Here the decision of a witenagemot (*generale placitum*) is afterwards affirmed by a shiremoot. Laughlin, in the Essays on Anglo-Saxon Law, p. 380, note 1, considers the cases in the Hist. Elien. and the Hist. Ramsiensis quite worthless as examples of Anglo-Saxon law — probably monkish forgeries of the twelfth century. Herein he goes too far. To be sure, there are many suspicious inconsistencies in the narrative of both histories, but that ought not to prompt us to condemn them categorically as forgeries. There is little in the cases cited which is inconsistent with the contemporaneous records we possess, however vitiated they have become through translation and the adoption of

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us that in the reign of Eadgar a thief, having forfeited his land to the king, appealed to him for judgment. Then the "witan of the Mercians" allowed the confiscation unless the defendant should pay his *wer* to the king.[1] Here again, there is no picture of a king's court brought before our minds, but rather that of a king sitting in his local witenagemot.[2]

It was clearly the policy of the Anglo-Saxon kings to insist that the local courts should exercise their functions. Consequently we find that by Eadgar's laws recourse to the king is made very difficult. One of them directs that no one shall carry his suit before the king unless justice has been refused him at home. If the law is too severe, he is to seek amelioration at the king's hand.[3] The first part of this law had been promulgated by Æthelstan, and was taken up in Cnut's code.[4] As a natural corollary it followed that the king had the power of instituting or sanctioning proceedings in specific cases by writ.[5] This prerogative, so characteristic of the Anglo-Norman procedure, does not seem to have been fully developed under the Anglo-Saxon kings. At least there are but two or three illustrations extant, to my knowledge, and these fall in the reigns of Æthelred and Cnut.[6] There are likewise instances on record in which a king intercedes for one party, while his successor intercedes for the other.[7]

Anglo-Norman legal terminology. The present poor edition of the history of Ely and its late origin warn us to use it with caution, and not as primary evidence. As the additional cases there cited do not materially affect my results, I have refrained from using them except in the present instance.

[1] Thorpe, pp. 205–209.

[2] "Ða gesohte Æðelstan Eadgar cyng and bæd domes.
Ða ætdemdon him *Myrcna witan land.*"

[3] Eadgar, III, 2.

[4] Æthelstan, II, 3; Cn., II, 17.

[5] Kemble, Saxons, II, p. 46.

[6] Kemble, C. D., III, 693 (see *ante*, p. 133, note 4). C. D., IV, 929: The news of a pending suit reaching the king, he sends *his gewrit and his insegel* to the Archbishop of Canterbury, and bids him to have the suit tried in the shiremoot. C. D., IV, 755, records a litigation in the shiremoot to which Tofig Pruda (probably Tofig, the sheriff of Somerset, of C. D., IV, 821) came "on the king's errand." The interpretation of this phrase decides whether the charter belongs to this category or not.

[7] Thorpe, pp. 201–204.

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If, then, the sources of Anglo-Saxon legal history will not permit us to speak of a clearly-defined king's court, we get, however, occasional glimpses of the king as arbiter over the decisions of the local public courts of his kingdom. This and no more can also be deduced from the concluding chapter of Asser's *Life of Ælfred*,[1] which, in somewhat rhetorical terms, declares the king to be the guardian of justice and equity as against the ignorance and oppression of the presiding officers of the public courts. Here we have the germ of an equitable jurisdiction which was to bear fruit under the centralizing state-system of the Anglo-Norman kings.

II.

To pass on to the public courts. The shiremoot is generally considered to have been competent to declare folkright in every suit.[2] This statement is based on a law of Eadgar which, however, names especially the *hundred court* as possessed of that competency, grouping all other courts under the general term gemot : "In the hundred, as in any other gemot, we ordain that folkright be pronounced in every suit."[3] In the laws there are but three references to the scirgemot, or scire, *eo nomine*, in its judicial capacity.[4] One of these has reference to an action of distress, *i.e.*, in a civil plea. It reads :

> And let no man levy distress, either in the shire or out of the shire, before he has thrice demanded his right in the hundred. If at the third time he have no justice, then let him go at the fourth time to the shiregemot ; and let the shire appoint him a fourth term.[5]

The hundred court is here the important factor ; the shiremoot's action is merely supplementary. Another law also

[1] Mon. Hist. Brit., p. 497.

[2] Stubbs, C. H., I, p. 128 (4th ed.).

[3] Eadgar, I, 7.

[4] Eadgar III, 5 ; Cn., II, 19 ; Cn., II, 79. Eadgar, III, 5 (*cf.* Cn., II, 18) speaks of the jurisdiction of the shiremoot in the vaguest terms. Cn., II, 79, refers to defending land "be scire gewitnesse," where scire evidently stands for scirgemot.

[5] Cn., II, 19. That such a removal to another court was not an appeal in the modern sense, has been made clear by Adams, p. 24.

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deals with the action of the shiremoot in litigations about land.[1]

These laws lead one to infer that the shiremoot dealt chiefly, if not exclusively, with civil pleas — an inference which is born out by the testimony of all the extant documents which record proceedings in the court of the shire.[2] The large number of offenses, great or small, which form the chief part of the Anglo-Saxon codes, were more easily and quickly disposed of in the more frequent sessions of a smaller judicial district than the shire — in the monthly meetings of the hundred courts. The demonstration of this fact I defer for the present to take up the question of the constitution of the county court.

The paragraph which Dr. Stubbs gives to this question (Chap. V, § 50) is misleading. He begins by saying that the sheriff held the shiremoot, according to Eadgar's law, twice a year. But the law distinctly says : Let them seek twice a year the shiremoot, and let there be present the bishop and the ealdorman, and there expound both the spiritual and the secular law

[1] Cn., II, 79. And he who has defended land, with the witness of the shire, let him have it undisputed during his day and after his day, to sell and to give to him who is dearest to him.

[2] Kemble, C. D., IV, 929. Convention about land in the shiremoot of East and West Kent, before 1011, (*supra*, p. 134, note 6). Thorpe, pp. 301–304.

Ibid., VI, 1334. Compact about land in court of Devon, 1040. Thorpe, 346–347.

Ibid., IV, 949. Similar compact in court of Hants. Hampton, 1048–1052.

Ibid., IV, 898. Similar case in shiremoot at Worcester, *temp.* Æthelr. (*et post?*). Thorpe, 375–378.

Ibid., IV, 732. Marriage-contract, *temp.* Cnuti (*Infra*, p. 138, note 1). Thorpe, 312–313.

Ibid., VI, 1358. Suit about testamentary land-grant in shiremoot of East and West Kent, before 988. Thorpe, 271–273.

Ibid., III, 693. Convention about land, before 995 (*supra*, p. 133, note 4). Thorpe, 288–290.

Ibid., IV, 755. Suit about land, before 1036 (*supra*, p. 134, note 6). Thorpe, 336–338.

Ibid., IV, 847. Writ to shiremoot of Kent, from which may be inferred the action of the shire in a land plea. *Temp.* Eadw. Conf.

The majority of the cases date from the last century of Anglo-Saxon rule. It may be well to state that none of the illustrations used in this article fall before the time of Ælfred. The prevalence of conventions among the cases cited warrants the observation of Adams (p. 26) that a compromise was always effected in the Anglo-Saxon courts when one was possible.

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(Eadg. III, 5). To be sure, Dr. Stubbs adds that "although the ealdorman and bishop sat in it to declare the law secular and spiritual, the sheriff was the constituting officer." He refers to Kemble's *Saxons in England*. Here we read that the scirman or scirigman was, properly speaking, the holder of the county court, scirgemot or folcmot. In support of his view, Kemble refers to several charters in which the scirman, scirigman or scirgerefa appears.[1] But in no case does this officer distinctly appear as, "properly speaking, the holder of the county court." In the first case a certain Ælfeh had declared his testament before Archbishop Dunstan, and had deposited one copy with him. His widow broke the will, and

the bishop proved ownership of all Ælfeh's bequest, at Erith, by witness of Ælfstan, Bishop of London, and all the family, and of that at Christ Church, and of Bishop Ælfstan of Rochester, and of Wufsie, the priest, who was shireman (sheriff), . . . and Wufsie, the shireman, received the oath for the king since he [the defendant] refused to receive it.[2]

From this it would appear that one of the bishops had been the presiding, and the sheriff merely the executive officer. This is more apparent in another case, where the Archbishop of Canterbury was clearly the presiding officer in the county court.

When Bishop Godwine [of Rochester] came to the bishop's chair he found in the minster the same deeds [of church property] that his predecessor had, and therewith claimed the land. He proceeded then to lay claim to the land — until the suit became known to the king [Æthelred II]. When the charge was known to him, *he sent his writ and seal to the Archbishop Ælfric*, and bade him that he and his thanes in East Kent and in West Kent bring about a just settlement through accusation and answer.[3]

[1] Saxons, II, p. 158, n. 1. He refers also to the Laws of Ine; here, however, not only the scirman but *any other judge* (dema) is spoken of, nor is any gemot in particular mentioned.

[2] Kemble, C. D., VI, 1288. *Cf.* Essays in Anglo-Saxon Law, p. 350–354.

[3] Kemble, C. D., IV. 929; Essays, *etc.*, p. 360–361. The sheriff is mentioned as merely being present.

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A third case records a transaction "before Cnut" in witness of Archbishop Lyfing, the convents of Christ Church and St. Austins Canterbury, and the sheriff.[1] Finally, one of the charters cited by Kemble lacks conclusive authority, as it is clearly spurious.[2]

All this evidence tends rather to undermine Kemble's generalization. Furthermore, he says that, while there is evidence that the sheriff sat without the ealdorman, there is no evidence that the ealdorman sat in judgment without the sheriff in the folkmot (meaning scirgemot, presumably).[3] The first of these statements is true, but the second is manifestly erroneous. We have records of transactions in the shiremoot in which the sheriff does not seem to have been present; at least he does not appear among the witnesses.[4] And his presence in the shiremoot seems by no means to have been taken for granted; for among the addressees of Eadward the Confessor's writs to that body, the sheriff is missing in the majority of cases, whereas the ealdorman (or earl, who superseded him) and the bishop always appear.[5]

[1] Kemble, IV, 732. The record has such a strong local coloring that we may infer that the matter, a marriage contract, was settled in the county court.

[2] C. D., IV, 872. A grant made with leave of King Æthelred is witnessed by Archbishop Ægelnoð (1020–1038); yet Thorpe, Dipl. Sax., p. 542, dates it 1000.

[3] Saxons, II, p. 158.

[4] Kemble, C. D., IV, 898; VI, 1334; III, 693; Earle, Handbook, p. 242.

[5] In the following list the sheriff is missing: Kemble, C. D., IV, 826–828, 830, 831–833, 841, 842, 845, 846, 848, 851–853, 855, 859, 860, 862, 864, 866, 868, 873, 876–878, 882, 884, 886–889, 892–894, 902; VI, 1319 (Cnut), 1343, 1345.

From 853 we learn that Toli[g] was sheriff of East Anglia. It is somewhat surprising that he appears without his official title in 874, 875, 880, 881, 883, 905, and 1342. But it is more significant that several writs of the same period addressed to the shiremoot of Norfolk, of Suffolk, of Norfolk and Suffolk together, or of East Anglia, of which Tolig was sheriff, should not contain his name or that of any other sheriff (nos. 852, 868, 873, 876–878, 882, 884).

In the following writs the sheriff, with or without his name, is one of the addressees: C. D., IV, 757 (Cnut), 829, 834–836, 837 (*cf.* 976), 839, 843, 849, 850, 853, 858, 863, 869–871, 874, 875, 879, 880, 881, 883, 885, 904, 905; VI, 1326 (Cnut). A few cases are doubtful, the name of one of the addressees appearing in the place usually filled by the name of the sheriff, but without his title. Such cases might come under the category of those writs in which Tolig, without his title, appears. In his case one writ gives us the clue. But in IV, 838, 840, 847, 854, VI, 1323, 1325, such a hint is not given.

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What, then, was the position of the sheriff in the shiremoot? I am inclined to think that he acted as the assistant or proxy of the ealdorman, or later earl. Thus we occasionally find the latter, either alone or in conjunction with the bishop, presiding in the shiremoot without the sheriff.[1] It may be asked: Who executed the decision of the court if no sheriff were present? The answer is, that the ealdorman (earl) had other officers to carry out his sentences. The generic and perhaps untechnical term for such deputies was *gingra*, which is translated by "junior." Thus this official appears twice in charters of the first half of the ninth century,[2] and once in the laws, where he is represented as holding pleas.[3] But in an ideal view of the just judge, written at the beginning of the eleventh century, the *gingra* appears in the light of a well-known institution.[4] Whenever the sheriff was present, he himself most likely executed the sentence of the court; but we have already shown that he was not necessarily present. There is sufficient evidence, of course, of the presence of the sheriff beside the regular officers of the shire court, the ealdorman and bishop.[5] Whenever we do not find the ealdorman (earl) in his accustomed place, the inference is that the sheriff sat in the shiremoot in his *stead*,[6] as suggested above. The reeve (gerefa), of which the sheriff (scir-gerefa) was a species, appears to have

[1] Kemble, C. D., VI, 1334; III, 693; IV, 898. Earle, Handbook, p. 242. In the third case the ealdorman seems to have presided alone.

[2] Kemble, C. D., II, 250 (charter of Berhtuulf, A. D. 841): Liberabo ab omnibus sæcularibus servitutibus magnis vel modicis notis et ignotis regis et principis vel *iuniorum eorum*. *Ibid.*, 258 (Berhtuulf, A. D. 845): Soluta et liberata sit. . . . ab opere regis et pastu regis et principis vel *iuniorum eorum*. . . . Dr. Stubbs cites a third case (C. H., I, p. 116, n. 6), but this is identical with the first. That a sheriff could also have his "gingran," appears from the Institutes of Polity, written after the death of King Eadgar, 975. Thorpe, Laws, *etc.*, II, p. 314.

[3] Ælfred, 38, § 2. If anything of this sort happen before the king's ealdorman's officer (*gingra*), xxx shillings as wite.

[4] F. Liebermann: Vom Gerechten Richter: *Zeitschr. für Rechtsgesch.*, V, p. 209 [8]. An ealdorman shall not choose unto himself ignorant judges nor unrighteous officers (*geongran*); p. 210 [10]. Often good judges have evil and robbing officers (*gingran*).

[5] Kemble, C. D., IV, 802, 755; VI, 1337; III, 693. *Cf.* next note.

[6] *Ibid.*, IV, 929; III, 693, if we may identify Alfgar "cyninges gerefa" with the scirgerefa; IV, 732.

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been under the control and moral influence of the bishop, inasmuch as the latter is bidden to collect the fines incurred by the delinquent reeve.[1] The bishop, indeed, seems in Cnut's time to have been the chief source of authority in the shiremoot. Not only in looking after the execution of divine right, but also in taking care of the rights of the king, he was to be *assisted* by the ealdorman.[2] He primarily was to declare (*tæcan*) the law, secular and spiritual; in case of need the earl (ealdorman) was then to lend the force of the secular arm.[3] Again, we read in the unofficial *Institutes of Polity*, composed after 975, that the bishop shall in accusations direct the purgation so that no man may wrong another, either in oath or ordeal[4] — a function which pertained to him, indeed, in virtue of his spiritual office. The preëminent position of the bishop in the shiremoot is easily explained by his greater moral weight and his undoubtedly better knowledge of the law.

From the above we may draw the following conclusions: The shiremoot dealt chiefly, if not exclusively, with civil pleas. The presiding officers were the shire-bishop and the ealdorman, with or without the sheriff, who, if present, was probably the "constituting officer." As to actual judicial authority, it seems, at least in the time of Cnut, to have lain chiefly in the hands of the bishop, who was assisted by the secular arm of the ealdorman (earl) and the executive power of the latter or his deputy, whether a sheriff or other officer.

The suitors of the county court, says Dr. Stubbs, were the

[1] Æthelstan, II, 26, 1; *cf.* Eadg., III, 3. In Cnut's charter (*circ.* 1020) we read ". . . eac ic beode eallum minum gerefum . . . þæt hy æghwær . . . rihte domas deman *be ðære scira b*[*isceopes*] *gewitnesse* and swylce mildheortnesse þæron don *swylce þære scire b*[*isceopes*] *riht þince*." Earle, Handbook, p. 230.

[2] "And eac *minum ealdormannum* ic beode þæt hy *fylstan þam b*[*iscopum*] to Godes gerihtum *and to minum kynescype*." Earle, p. 230; Stubbs, S. C. p. 75.

[3] "Gif hwa swa dyrstig sy, gehadode oððe læwede, Denisc oððe Englisc, þæt ongean Godes lage ga *and ongean mine cynescype oððe ongean worold riht* and nelle betan and geswican *æfter minra b*[*isceopa*] *tæcinge*, *þon*[*ne*] bidde ic þurcyl eorl . . . *þæt he ðæne* unrihtwisan to rihte gebige gyf he mæge." Earle, p. 230; Stubbs, S. C., pp. 75, 76. Here *tæcan* is evidently used in the same sense as in Eadg., I, 7; *cf.* Cn. II, 18.

[4] Thorpe, Ancient Laws, II, p. 312, chap. vii.

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same as those of the hundred court: all lords of lands, all public officers, and from every township (the parish priest) the reeve and four men.[1] The lords of lands, he says, were called in this aspect, scir-thegns. But this designation does not seem to have had any *technical* meaning. The "thegns" of Herefordshire, for instance, had the same status in their shiremoot as the "scir-thegns" of Hampshire in theirs. If there had been a difference, why should the address of writs invariably run in the name of the "thegns" of such and such a shire? Furthermore, in the witness clause of the writs the expression "all the thegns"[2] occurs much oftener than "all the scir-thegns."[3] How many of these thegns, or lords of lands, were in the habit of coming to court, the sources do not permit us to say. Still it will be conceded that suit of court was considered less a right than a duty.[4] Who are meant by "all the public officers" is not clear. Finally, the authority for the statement that the parish priest, the reeve, and the four men of every township sat in the shiremoot, appears scanty at best.[5] It is based on a passage in the private legal compilation called The Laws of Henry I,[6] and this Dr. Stubbs has misinterpreted. What the law really says is, that in the county court (1) the lord may answer for his land himself; (2) his steward may answer in his stead; (3) *if neither of them could be present*, then the reeve, the priest, and four of the better sort of the township *might answer* for the vill themselves.[7] Besides, had this deputation sat *regularly* in the shiremoot, why is the plain reeve, or gerefa, never mentioned in the address of the writs?[8]

[1] Stubbs, I, p. 128. *Cf.* I, p. 115.

[2] Kemble, C. D., IV, 785, 728, 789, 802, 821 *et passim*.

[3] This phrase occurs only three times: *ibid.*, IV, 820, 949; VI, 1337.

[4] F. W. Maitland (*English Historical Review*, III, pp. 417–421) has clearly shown this for Anglo-Norman times, and it was probably the same before the Conquest.

[5] What Dr. Stubbs (I, p. 128, n. 4) cites from Domesday is not to the point. *Cf.* W. J. Ashley, "The Anglo-Saxon Township," *Quart. Journ. Econ.*, VIII, 3, p. 361, n. *

[6] Leges H., I, c. 7, § 9; *cf.* § 8.

[7] J. H. Round: "The Suitors of the County Court," *Archæol. Rev.*, II, p. 67.

[8] But this may perhaps be because he was generally a villein. J. H. Round, Domesday Studies, II, p. 551, speaks of a writ of Henry I addressed to the

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Dr. Stubbs himself concedes that the point is left questionable in the laws, but holds that it is proved by later practice. For this the usage under Henry III is appealed to. The four law-worthy men of every township in Henry II's Assizes of Clarendon and Northampton, chap. 1, might also have been cited in this connection. But such late data ought to be used only with great caution, as secondary evidence. Still, may we not, without relying too much on the argument of "archaic survivals,"[1] assume with tolerable certainty that the author of the so-called Laws of Henry I had inaccurately expressed an Anglo-Saxon idea of popular representation, such as appears in the oath of "totius centuriatus, presbiteri, praepositi, vi villanorum uniuscuiusque villae" in furnishing the returns for the Domesday Survey of Ely?[2] At any rate, I cannot but think that such popular deputations may under certain conditions have existed before the Conquest, and that the Conqueror was politic enough in this as in other cases, to adapt, if not to adopt, an existing institution. The lords of land continued as before to comprise the landed or feudal element, the judges of the county court, whereas the people of the townships occasionally formed the representative element.[3]

"reeves" of Sussex. But the "*omnes ministri*" mentioned here more likely correspond to the "*ealla þegnas*" of the Old English writs of Eadward the Confessor, who, in fact, sometimes appear as "*ministri*" in their Latin dress. See Kemble, C. D., IV, 833, 853, 867, 903, 904, 906.

[1] See on this point W. J. Ashley, *op. cit.*, p. 361.

[2] Domesday Book, IV, f. 497. Stubbs, S. C., p. 86.

[3] J. H. Round, *l. c.*, p. 68. Dr. Stubbs (I, p. 128, n. 4), to illustrate the participation of the popular element, the ceorls, in the shiremoot, cites some charters. In the first (Kemble, IV, 732) occurs the phrase, "Ðyssa þinga is gecnæwe ælc dohtig man on Kænt and on Suð Sexan on þegenan and on ceorlan" (of these things are aware all the doughty men of Kent and Sussex, both thanes and ceorls). But does it follow that they were present at a court held in Canterbury? The phrase seems rather a formula expressing general assent. *Cf.* Kemble, VI, 1288. Dr. Stubbs also calls attention to the direction of royal writs to the thegns of the shire, "twelf hynde and twyhynde" (Kemble, IV, 731; Earle, pp. 229–232). Only the former of the documents cited is, properly speaking, a writ. The other is Cnut's policy of government, which naturally enough would be directed to all his officials and to the people at large. Moreover, the ceorl is not mentioned by name in either of the documents; and the twyhyndeman, who is mentioned, had the same status as the ceorl according to a compilation of Mercian laws only (Schmid, App., VII, c. 1, § 1; c. iii, § 1). Are we, then, justified in considering the ceorl as regularly identical with the twyhyndeman?

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III.

The jurisdiction and organization of the hundred court have received more satisfactory treatment than those of the shire court. Still there is room for correction. The hundred court, say the laws, could declare folk-right in every suit. It seems to have been the unit of the judicial system. It was to meet every month; the summons to the litigants was to be issued seven nights before. A threefold contempt of summons on the part of the accused brought confiscation on the culprit.[1] Every one was, in the first instance, there to seek suit. If, however, the shiremoot dealt chiefly with the more important suits about land, it seems reasonable to suppose that the lesser civil cases,[2] and particularly the constantly recurring criminal offenses, would be left to the hundred court, where meetings were more frequent, and hence decisions more speedy.

Who was the presiding officer and what was the composition of the hundred court? The question has been vaguely answered. Dr. Stubbs justly doubts whether the ealdorman of the shire, the sheriff, or the bishop sat regularly in the hundred court at any period.[3] The large number of hundreds in some shires would make it impossible for those officers to attend each of the monthly meetings. Besides, the ealdorman, as civil and military head of his shire, and the bishop, as the spiritual chief, would be fully occupied with their own duties.[4] The sheriff, on the other hand, seems at times to have been the presiding officer of the hundred. The laws are silent on this point, but there is a writ of Eadward the Confessor in which the sheriff figures as one of the regular holders of the hundred

[1] Eadgar, I, c. 7. Æthelstan, II, § 20. Eadgar, III, c. 7; *cf.* Cn., II, 25.

[2] To my knowledge, we have only one illustration, and that is a mere reference, of the judicial powers of the hundred court in the Anglo-Saxon charters (Thorpe, p. 427, *circ.* 1066). The following extract from Domesday may refer to an actual decision of the hundred court: "In eadem villa idem invasit iii virgatas terrae super regem . . . *per judicium hundred.*" Domesday, II, f. 99.

[3] Stubbs, I, p. 116.

[4] Still, in the ordinance of William I separating the spiritual and temporal courts, the bishop or archdeacon appears as holding pleas in the hundred court in spiritual cases. Stubbs, Select Charters (4th ed.), p. 85.

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court.[1] Furthermore, an officer called [ge]motgerefa appears in this writ as a functionary of the hundred court. Gerefa, or reeve, was apparently the generic term for a class of officials one of whose duties was to preside at this court. Of this class, the scir-gerefa, or sheriff, was a species which took its distinctive title from its connection with the court of the shire, though its activity was not necessarily restricted to this. If the ealdorman had his deputies, or *gingra*, we may suppose that the reeves, who were much more frequently called upon to preside at a court, also had theirs.[2]

As to the suitors of the hundred court in Anglo-Saxon times, we have no direct evidence. What has been said on this point in regard to the court of the shire, applies equally to the hundred court. It is indeed likely that many of the land-holders had already in Anglo-Saxon times acquired that immunity from attendance at the hundred and shire courts, which so many of them enjoyed after the Conquest.

To sum up: The hundred court of Anglo-Saxon times was the judicial unit, deciding in both civil and criminal pleas. Its presiding officer was taken from a class of officials called reeves, and its suitors were the same as those of the larger local court, the shiremoot.

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[1] Kemble, C. D., III, 840. The king grants Hornemere hundred to Abingdon, "so that no sheriff or moot reeve have there any investigation or court unless at the abbot's bidding and wish." *Ibid.*, IV, 850, in which the *sheriff* is commanded not to levy distress within a certain hundred without the consent of the abbot, is suspicious, on account of the unheard-of title of the king — "Eadward cing ofer Engleðeod."

[2] *Supra*, p. 139, note 2. It is possible that the hundredes man, or hundredes-ealdor, was the presiding officer of the hundred court, under another and popular name. At any rate, he was the police officer of the hundred, according to Eadgar's constitution of the hundred.

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REVIEWS.

The History of Trade Unionism. By SIDNEY and BEATRICE WEBB. London and New York, Longmans, Green & Co., 1894. — 558 pp.

Labor unions have played so important a part in recent English history that it is remarkable that no one hitherto should have attempted to study their history and to estimate from every point of view their influence upon industry and politics. We have had all manner of essays and monographs of more or less value. But the present work of Mr. and Mrs. Webb may be declared to be the first really adequate history of the subject. The authors have had unique advantages in preparing for their task. Mr. Webb is well known as one of the Fabians, as the author of numerous monographs on socialism and the labor problem, and as one of the more important leaders in political and social reform among the working class. Mrs. Webb has become almost equally well known through her work on the coöperative movement, written while still Miss Potter, and through her advocacy of various reforms among women wage-earners. Each has had a good economic training; each has spent several years delving in the public and private libraries of England; and each has kept in touch with the actual labor movement during recent years. It is not surprising, therefore, that the result should be a signally important and wholly admirable work.

The preliminary chapter is devoted to the origin of trade-unionism. Although the authors have not attempted any independent investigation into the history of guilds, they are well acquainted with recent literature. They show their comprehension of the essential difference between the mediæval and the modern industrial system, by pointing out once again how impossible it was for the modern trade-unionism to be a direct outcome of the old craft guilds. They combat, and with seeming justice, Professor Ashley's recent statements about the journeymen's guilds of England; and they again bring into prominence the fact, which some of us lately seem to have lost sight of, that there could be no serious clashing of interests between master and workman in the middle ages. The origin of trade-unionism they find in the divorce of the worker from the ownership of the means of production. But whether trade-unionism would have

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been a feature of English industry even without the steam engine and the factory system, as the authors seem to hint, is perhaps more open to question. Although this part of the work has already been well done by Held, Brentano and Toynbee, the authors give an exceedingly lucid picture of the efforts made by the laborers to maintain their standard of life through the enforcement of antiquated measures, like the limitation of apprenticeship and the judicial fixing of wages. It was not until the last years of the eighteenth century that the Combination Acts were made general and the real struggle began. Before that time, as the authors clearly show, Parliament was not distinctly opposed to the laborers, but the artisans themselves mistook the remedy and attempted the impossible.

The period from 1799 to 1825 is described as that of the struggle for existence. We have become fairly well acquainted with the terrible degradation of the workers on the one hand and with the violence and turbulence of the illegal combinations on the other; but the details of the struggle which led to the repeal of the Combination Acts have not been familiar. This repeal was due above all to the master-tailor Francis Place, whose manuscript account of the whole movement, preserved in the British Museum, has been utilized with signal success by Mr. and Mrs. Webb. It would take us too far astray to recount here the various steps in the struggle — the short-lived victory of 1824, the subsequent reaction, and the final establishment by the act of 1825 of the right of collective bargaining, involving the power to withhold labor from the market by concerted action. With this the first great step in advance had been won.

But the anticipated millennium did not appear; the crisis of 1825 and the ensuing years of depression brought to nought many of the high hopes. The years from 1829 to 1842 are described as the revolutionary period, marked at its beginning by more ambitious attempts at consolidation. Incidentally the authors make a good point by calling attention to the old but much abused distinction in nomenclature. A trade union, as the word implies, is a union of the workers in a single trade; a trades-union is a union or federation of various trades. Place himself was the greatest advocate of trade-unionism, but a thorough opponent of trades-unionism. The early thirties saw the real birth of the trades-union idea, which for the time attained considerable proportions and aroused great fear and excitement among the employers. The government was alarmed, and the boasted supremacy of the unions was shown to be wholly without reality when in 1834 the six Dorchester laborers were

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sentenced to seven years' transportation for the mere act of administering an oath. The curiously mistaken opinions of the economists at the time are reflected in a remarkable report unearthed by the authors, in which the writer, Nassau William Senior, uses the most violent language against the principle of trade-unionism and goes so far as to recommend the confiscation of the funds of the organizations. The government did not dare to submit this report, but showed its opposition none the less determinedly. The rise and fall of the "New Unionism" from 1830 to 1834 proved that the workers would have to start out again on different lines. The magnificent dreams of Owen are alluded to, but it is well shown how the political situation was the paramount one, forcing the laborers into Chartism. Political changes first, as the substratum of future industrial reform, became the watchword of the laborers.

From 1843 on the trade-unionists laid aside all their grand projects of social revolution. They set themselves resolutely to resist the worst features of the legal and industrial oppression from which they suffered, and they slowly built up for this purpose organizations which have become integral parts in the structure of the modern industrial state. After the triumph of the free-trade movement, the great separate unions developed, like those of the engineers, the carpenters, the cotton spinners and others. Large funds were collected, and strikes were no longer the sole end of the unions' existence. The history of the struggle between the engineers and the masters in 1851–52 is well told, and the influence of the small band of eminent men who composed the Christian Socialists in effecting a change in public opinion receives due recognition. The next few years marked the building up of the different societies, until in 1867 the unions were again assailed by a double danger. In the first place the Sheffield outrages and the fierce opposition of the employers threatened to bring about a change in the criminal law unfavorable to unionism; and secondly, the courts themselves now uniformly held that the law gave no protection to the property of the unions against embezzlers. It was at this crisis that men like Frederic Harrison, Professor Beesley, Thomas Hughes, Henry Crompton and J. M. Ludlow stepped in to brave the storm of public opinion and to secure for the laborers their legal and industrial rights. The commission of 1867 brought stone, not bread, to the enemies of trade-unionism, and it was only a few years later when the unions won their final emancipation. In 1875 the Criminal Law Amendment Act was unconditionally repealed and the Employers

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and Workmen Act completed the legal recognition and final victory of the unions. Public opinion had been entirely won over.

The ensuing period until 1885 is concerned chiefly with sectional developments, while from that time on we notice the growth of the socialistic movement among the unions themselves. It is during this last period that the authors, as they confess, find the most difficulty in being impartial; for they themselves have had a considerable share in the movement, and they recognize the fact that it is too soon to judge of the results of the new unionism. But the details of the development are in themselves of great value.

From the preceding survey it will be seen that Mr. and Mrs. Webb have attempted to confine themselves to the recital of the chief events in the external and internal history of trade-unionism, without going much into the deeper problems as to its justification, spirit and policy. These they reserve for the succeeding volume, which we shall all await with impatience. But enough is contained in this first installment to mark the authors as by all means the ablest exponents of the working-class movement that England has yet seen. It is to be hoped that in a future edition the history of the agricultural laborers will be treated with less brevity.

It would be interesting, were it possible here, to point out the many lessons this first volume contains for political economy in general and for the American public in particular. We in the United States are in very much the same stage that England reached over a generation ago. Here also trade-unionism is frowned down by public opinion; here also its economic advantages are ignored by men of the brightest intellect and most upright character; here also the unions themselves are in somewhat the same formative condition as their English predecessors of two or three decades ago. The one great difference is that the economists have learned a lesson, and that, whereas the English economists were formerly the opponents of unionism, the American economists are at present almost its only supporters. But a history like that recorded in the work before us is calculated to give us new faith and new hope. It shows that the problems of the young America are not fundamentally different from those of the old England; it proves that much of what we feel tempted to deplore is nothing but a necessary step in the onward march to greater freedom and industrial peace. No thoughtful American can afford to be ignorant of this history; no true economist can fail to profit by its lessons.

EDWIN R. A. SELIGMAN.

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La Popolazione e il Sistema Sociale. Di FRANCESCO S. NITTI. Turin and Rome, L. Roux e C., 1894. — 212 pp.

This book consists of two quite distinct parts — an exposition of the doctrines of previous writers on the subject, and a development of the author's own views. The first part is the better of the two. The second, which attempts to overthrow the doctrines of Malthus, is even less successful than such attempts are apt to be, because the author fails to grasp the real points at issue. In the first place, his assumption that the amount of food in a country is proportionate to its wealth as measured in money, is quite incorrect, and vitiates all statistical reasonings based upon it. In the second place, the attempt to disprove Malthus's assertions as to the tendency of population to increase, by reasonings as to its actual increase, is quite futile. To the Malthusian the failure to increase is itself the evidence of the operation of those positive checks on which his theory lays stress. Finally, the fact that slow increase of population is associated with large *per capita* wealth, instead of disproving the Malthusian theory, as Nitti supposes, tends rather to confirm it.

There is quite a pitfall at this point, into which warier reasoners than Nitti have stumbled. The main practical question, according to the opponents of Malthus, is this: Is it misery or comfort that causes a high birth rate? In the latter case Malthus is right; in the former case he is wrong. They then show that a high birth rate is associated with misery rather than with comfort, and think that they have proved their case. Only let everybody have the chance for comfort, they say, and the birth rate will take care of itself. The trouble with these writers is that they mistake concomitance for causation. It is quite as probable that the comfort which is habitually found in connection with a low birth rate should be its effect as its cause, in which case all Nitti's facts react against his own line of argument. It is, in my opinion, even more probable that both are the effects of a common cause: that the people with the low birth rate and high comfort are those with a calculating temperament and a code of morals based upon it; while those with the high birth rate and low comfort are those with an emotional temperament and a corresponding code of morals. If this is true, it leaves the Malthusian theory slightly modified in its form of statement, but in its essential points reinforced rather than weakened.

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Trusts, Pools and Combinations, as affecting Commerce and Industry. By J. STEPHEN JEANS, M.R.F., F.S.S. London, Methuen & Co., 1894.

It is gratifying to notice the recent attempts to consider the problem of industrial combinations from a broader standpoint. It is coming to be generally recognized that trusts, pools, combinations and coalitions are manifestations of the same fundamental development, that they differ only in intensity, not in principle, and that they are products of natural causes, not arbitrary inventions of rapacious monopolists.

Mr. Jeans has gathered a number of facts about some of the most notable combinations of the day. In his prefatory note he states that "he does not consider himself called upon to pronounce very definite approval or condemnation of the trust-system generally"; he wants "to state what he knows about them without conscious partiality or prejudice."

It does not appear that this method has produced very good results. The author writes under the decided influence of the old orthodox school, although he wants to rid himself of its teachings to a certain extent. He cannot draw conclusions, or even group facts, without a relapse into the old methods. He is apparently a free-trader, an enemy of all state interference, and a believer in the law of automatic regulation of supply and demand under a system of free competition. He recognizes that combinations are to-day unavoidable, but he apparently would like to have them restricted as much as possible; and though opposed to state interference, he would hardly object to legislation in this direction if it could be made effective. Therefore he devotes the last chapter to a statement of the evils of the trust system, but none to a fair record of its advantages. It may be questioned whether this is consistent with his professions of impartiality.

Still more serious objections might be raised against the work. I do not feel satisfied that he has been able fully to master the actual meaning of the problem, either theoretically or historically. The "corner," *e.g.*, is something fundamentally different from the pool or trust, as it is devoted only to speculative purposes. So it was restricted by mediæval legislation, as was all speculation. The trusts, on the other hand, aim at a regulation and organization of production, and correspond in a certain way to the mediæval guilds, which were recognized and regulated by law. This Mr. Jeans does not point

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out. Moreover, he gives a discussion of futures, or options, which have actually nothing to do with the general movement, except in so far as they are occasionally made use of for cornering purposes; the economic significance of the dealing in futures lies in a totally different direction.

As to the historical treatment, the author's information has apparently been insufficient. The remarks about olden times, quotations from McPherson, *etc.*, are probably only intended to give a little scientific veneering to the essay; a thorough discussion of the problem would require a far wider knowledge of historical facts, and the citation of more appropriate examples. It is not true that "the common-law or the statutes took the part of the seller against the buyer" (page 11); he quotes this from Bastiat, but Bastiat was talking about France. What Mr. Jeans means by drawing a parallel between the Standard Oil Trust and the Hanseatic League (page 96) is hard to understand. Their principal aims and their organizations were so entirely different that the comparison rather obscures the problem. Not to mention numerous errors as to facts (the Standard Oil Trust was dissolved in 1892, not in 1890; the Reading combination originally gave a very strong and favorable movement to the securities of the companies concerned, and it collapsed afterwards for other reasons, which are not mentioned at all, *etc.*, *etc.*), his information often seems to be derived from very unreliable newspapers, while he seems unacquainted with the very important publications on trusts by W. W. Cook. The position of the workingmen as producers, or better, as parts of the machinery of production, does not seem to be sufficiently discussed. What justifies the suggestion (on page 185) that since 1888 there have been troubles between the trusts and their employees? The history of the crisis of 1893 points in just the opposite direction.

These are only a very few of the objections which are called forth by almost every page. More valuable are some of the chapters on English affairs, like that on the Australian Shipping Pool in London.

The book may be welcomed as an attempt to discuss the question, but it is to be hoped that in a second edition it will be radically changed. In its present shape it does not add much to scientific knowledge, and a popular book, which it is probably intended to be, ought to be written with more care, perhaps, than a scientific essay, and certainly only after a far more complete mastery of the subject.

ERNST VON HALLE.

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Eight Hours for Work. By JOHN RAE, M.A. London and New York, Macmillan & Co., 1894. — 340 pp.

For three-quarters of a century the demand for a shorter working day has been a prominent phase of the labor movement. It has been advocated for all sorts of reasons. It has been generally opposed by the employing class, and until recently by economists. The chief ground of opposition has been that to reduce the working hours would diminish the *per diem* product, and consequently increase the cost of production and diminish profits. Although it is true that the output per laborer is greater to-day with ten hours than it was in 1820 with fourteen hours, the capitalists refuse to believe that to reduce the working day to eight hours would not lessen the output per laborer. In short, they refuse to believe that, other things remaining the same, eight hours' work will equal ten hours' work. Consequently, we find among employers a willingness to reduce the hours of labor only if the laborers will agree to a proportionate reduction in wages.

Mr. Rae has assumed the task of proving that the reduction of the hours of labor will not reduce the output, insisting that the laborers' productive capacity will increase directly as their working day is shortened. He says (page 13):

> The question of questions, therefore, in connection with any proposed further reduction of the hours of labor is the question of the probable effect of the change on the personal efficiency of the work people. If short hours mean short product, they would mean short profits and short wages too.

He very properly makes much of Robert Owen's experiment at New Lanark, where the working day was reduced in three installments from sixteen to ten and a half hours. In such instances the effect would be very much as Mr. Rae contends, because the working day was then so long that the last three or four hours' labor was performed under conditions of increasing physical exhaustion. The proof of this was amply set forth in the testimony before the Parliamentary committees from 1815 to 1845, where the overseers testified that it was necessary to whip children to prevent their going to sleep and falling into the machinery. Wherever the length of the day is such as to compel laborers to continue work after physical exhaustion begins, a reduction of the hours of labor will be followed by some increase in the average hourly output. This, of course, is what took place in all the reductions in the hours of labor in the first half of

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the century in England, and in nearly all reductions up to date on the continent and in some states in America.

But this does not justify the assumption that the same relative increase of product per hour will follow a reduction from ten hours to eight. If the doctrine were true that the laborer would, by an increase of his activity, augment the product directly as the day is shortened, there would be no real advantage in shortening the working day, because a reduction in the hours would simply mean a proportional increase of the pressure upon the laborer. If there is any good reason for reducing the hours of labor at all, it is to lighten the burden of labor. To deny that is to take away the economic and social importance of the short-hour movement. The real economic improvement of society consists not in making laborers do more in a shorter time by working harder, but in enabling them, through the application of science in improved methods, to produce more in a shorter day with less exertion.

The fault of Mr. Rae's book is his evident disposition to minimize the influence of machinery and quite perceptibly to exaggerate the effect of increased personal effort on the part of the laborers. Thus in referring to the greatly increased product per laborer in the cotton industry of Lancashire, he says: "More than three-fourths of the whole came from closer attention and greater accuracy of work on the part of operatives." To any one at all familiar with the history of cotton manufacture this is an obvious overstatement. For instance, until the introduction of the weft-fork, which was not until late in the fifties, a weaver could mind only two looms, and those running at the low speed of probably sixty or seventy picks per minute. After the introduction of the weft-fork, which stopped the loom whenever the filling thread broke, and thus saved a great deal of turning back and readjustment, three and four looms became the rule for men and some women in Lancashire, and instead of sixty or seventy picks a minute, many looms now run at the rate of one hundred to one hundred and twenty. Thus, the number of looms which a person can mind and their rate of speed have been nearly doubled, not by the increased dexterity of the weavers, but by improved machinery. In further proof of this, the men weavers in the United States mind eight looms, and women six and sometimes eight. Mr. Rae would hardly claim that this is due to the greater intelligence and dexterity of the American weavers over the English, since the very weavers who are minding six and eight looms in Fall River, Lawrence, Holyoke and Cohoes are chiefly English and Irish. The

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weavers who could mind only four looms in Lancashire can mind eight in Massachusetts. This shows that it is the economic conditions of the factory and not the physical quality of the man that makes the difference.

If we turn to purely hand labor, the error underlying Mr. Rae's contention is more obvious. On page 177, in a complaining tone, he quotes a master builder as saying:

> Where it used to be the custom for a good bricklayer to lay a thousand bricks a day, three hundred or four hundred is about the usual thing now. The cost of labor has increased from forty shillings a rod, which it was thirty-five years ago, to eighty shillings or ninety shillings now.

Mr. Rae severely censures the bricklayers for not laying as many bricks now as formerly. But why this great difference between bricklayers and factory operatives? Are bricklayers a distinctly more shiftless class than factory operatives? If this were admitted, it would be fatal to Mr. Rae's whole contention, which is "that the higher the wages the greater the intelligence, and the greater the intelligence the greater the dexterity and activity of the laborers." Bricklayers everywhere receive nearly double the wages of factory operatives, and hence ought to show a greater increase in productive power with the shortened day; but, as everybody knows, they do not show this.

Economically, Mr. Rae is really very much in the same position as are Edward Atkinson and Mr. Schoenhof regarding the question of labor cost in America. They argue that, because in the long run high wages give a low cost of production, a diminished labor cost must immediately follow a rise in wages. This conclusion is entirely false, as Mr. Rae's facts conclusively show. On the strength of this error they have advocated free trade in America, asserting that the higher wages here necessarily create a proportionately greater personal efficiency of labor and hence a lower cost of production — an assertion which practical men know is not true.

There is, of course, some truth in Mr. Rae's claim regarding the hours of labor, as there is in the Atkinson-Schoenhof claim, but the influence of this fact is very slight, and diminishes after a certain degree of proficiency has been reached. The error in both cases is in attributing the increased productive power to the wrong factor. It is generally true that in the long run the product per day has increased as the hours of labor have been reduced; it is also true that wages have increased with the shorter working day; but it is

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not true that the individual exertion of the laborer has increased as the hours diminished and wages advanced. On the contrary, the great fact of this century is that it is the increased use of capital in various forms that has increased the *per capita* product and made possible a shorter day, higher wages, easier work, cheaper products and greater profits.

It should be kept prominently in the foreground that the primary object of reducing the hours of labor is not to benefit capitalists, but to improve the condition of laborers by making each day's drudgery a little less, and each day's social enjoyment a little greater. The social elevation of the masses is of itself an all-sufficient reason for shortening the working day or changing any other industrial or social institution. The question of the output belongs to the capitalist side of the situation. It is his economic function to see that in various ways sufficient new economies are introduced to keep up and even to increase the output. And this is what has always occurred in a greater or less degree.

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Die Arbeitsverfassung der Englischen Kolonien in Nord-Amerika. Von A. SARTORIUS VON WALTERSHAUSEN. Strasburg, Karl J. Trübner, 1894. — xv, 232 pp.

In writing this book the author had avowedly three ends in view: first, to present a general picture of the legal and actual position of the common laborer in the thirteen English colonies; second, to bring to light the real connection between the several systems of labor — indentured servants, wage-earners and slaves; and, finally, to prove that it was really the different forms of production and exchange growing up in the colonies that moulded these three labor systems into their final form.

On the whole the work is well done. Rather too much space, from the American standpoint, is devoted at the outset to describing the exact location and early development of the colonies. The system of indentured servitude is then very clearly explained from the standpoint of both the master and the apprentice. The causes for the slight development of the wage-system in these early days are also satisfactorily set forth.

Professor von Waltershausen's account of the Mercantile System and its effect upon the institution of slavery in the colonies will strike

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one as by far the best thing in the book. The point of view is interesting and certainly brings to light instructive facts. In general, however, the author's treatment of the origin and growth of slave labor in our country is unsatisfactory. There is too much description of well known conditions, with only here and there an attempt to explain matters. This is especially the case with the chapter which is devoted to the treatment of the slaves by their masters and overseers. Surely the long biography of an imaginary Congo negro is out of place in a book of this kind.

Professor von Waltershausen adds a long list of authorities to his work and gives liberal excerpts therefrom, but generally to the point. In looking over the list one finds that early histories and books of travel have for the most part been relied upon, while the Colonial Records and records of the Board of Trade seem not to have been carefully examined. On the general development of the colonies later American works than those of Bancroft and Hildreth do not seem to have been consulted by the author — which is strange in the light of the recent work so admirably done in this field.

Professor von Waltershausen's book is throughout interesting and instructive in style, as well as in plan and method. Works on American economic history are, one might almost say, crying needs. Professor von Waltershausen has set us an admirable example. His latest book should inspire us to continue the work along these lines.

LINDLEY M. KEASBEY.

BRYN MAWR COLLEGE.

Geschichte des Antiken Kommunismus und Socialismus. Von DR. ROBERT PÖHLMANN. Vol. I. Munich, C. H. Beck, 1893. — xvii, 618 pp.

The importance which the discussion of socialism has attained is suggested by the appearance of such a work as this, which devotes a volume of more than 600 pages to the discussion of Greek socialism alone. What the scope of the completed work is to be we are not told; if carried out on the present scale, it will apparently be the most important work in existence on the subject.

Like all such undertakings, the present work has its disadvantages. It is exhausting as well as exhaustive, and the laboriousness of the writer's style is unrelieved by even the faintest literary instinct. But form, proportion, elegance, are so generally lacking in such German publications that we are more surprised by their presence

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than by their absence. It is no small tribute to the substantial value of books like this that we are compelled so quickly to forget their defects.

Without defining his terms, the author seems to use "communism" to designate socialism in practice, the term socialism being restricted to theoretical or philosophical proposals. Under the former head are considered primitive communism, the communism of the Homeric epoch, and the communistic states of Lipara, Magna Græcia, Sparta and Crete. The view presented is decidedly at variance with that ordinarily held. While the earliest social organization is undoubtedly communistic, a careful examination of the Homeric poems presents indisputable proof that this primitive organization had been long outgrown and that the institution of private property had attained a paramount importance in the social economy of the period. Even the customs which suggest the earlier economy are shown to be survivals whose significance is often lost. The argument is sometimes controversial in tone, but it could hardly be more convincing.

But if the early communism had died out before the days of Homer, what shall be said of the theory that the communistic states of Lipara, Crete and Sparta were survivals of this earlier economy? How are such survivals to be explained in the midst of civilizations so conspicuously individualistic? How did one part of Hellas get the start of another part by so many centuries? Above all, how did the older economy "survive" in colonies sent out by states that had abandoned that economy? Dr. Pöhlmann's answer is that this later communism was in no way like the earlier. In its most essential traits, as in the land system of Sparta, it shows its artificial character, — a character sufficiently accounted for, moreover, by the military organization and function of these states. There is no more admirable chapter in the book than that on the "Social State of the Legends and the Socialistic Natural Right." The history of Sparta, the author points out, first took definite form in the hands of social reformers who wished to arrest the decay of the state and the insidious encroachments of the surrounding wealth-worship. The period was as fruitful in social theories as the eighteenth century. Plato, Aristotle and Isocrates had filled the minds of men with communistic ideals of a perfect state. The historical temper was unknown. To the reforming zeal of the day what was more natural than that these ideals should be all unconsciously read back into the history of Sparta, thus giving to the cause of reform the support of tradition and the authority of the mighty Lycurgus? This not only might but

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must have happened. It necessarily follows, according to Dr. Pöhlmann, that all arguments drawn from the Lycurgus tradition are untrustworthy, and he then proceeds with masterly skill to winnow them of their chaff.

Athens has often been cited as furnishing examples of a partially socialistic economy, but our author implies his disapproval of such an analysis. Athens was "atomistic-individualistic," illustrating the tendency of unbalanced individualism to destroy all social cohesion, to develop destructive egoism and transform the noble art of government into a scramble of individuals over the spoils of public plunder. The parcelling out of public resources among individuals was not socialism, but individualism gone mad.

How desperate the prospects of an individualistic organization of society must have seemed in the light of Athenian experience, is indicated by the fact that two thinkers so radically different as Plato and Aristotle should have joined in the most unqualified attack upon it that has ever appeared in human literature. The most of Dr. Pöhlmann's large volume is devoted to a consideration of their social philosophy. Here again the accepted interpretations, after being acutely analyzed, are pronounced unsatisfactory. It seems incredible that anything so long known and discussed as Plato's *Republic* should be the subject of fundamental misconception, but it is difficult to resist this conclusion.

The features of Plato's scheme — the rule of reason and virtue, the community of goods and wives, the equality of the sexes and the detailed autocratic socialism of the whole — are familiar. The prevailing criticism, as represented by Zeller, is almost as well known. It charges Plato, first, with inconsistency, in that he leaves undeveloped the whole industrial régime of the state while going into the utmost detail regarding the training and choice of state functionaries. The inference is either that he was unable to conceive of a socialistic régime beyond the point of "glittering generalities," or that he intended to leave the industrial portion of the community in unregulated individualism, caring only for the development of the ruling *élite*. The superficiality of these conclusions is proved by the simplest reference to Plato's own statement. He fortunately tells why he neglected the details of industrial organization. While believing that they should be under the absolute control and minute supervision of the state, he does not believe in any theory of their management which would hamper those to whom the duty of management is entrusted. In other words, Plato does not believe in a constitu-

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tional government. The safeguard of the state lies in the character of its rulers, and these, once chosen with all possible precautions, are not to be hampered in the exercise of that higher wisdom, the proud possession of which determined their choice.

The further claim that Plato sacrificed the individual to the state is equally unfounded. He *subordinated* the individual to the state, but only in the conviction that so he would attain his highest *individual interest.* Statements on this point abound.

Finally, we are told that Plato sacrificed the many to the few. This allegation is made both by way of censure and by way of praise, according to the bias of the critics. They are divided, like the society of which they are a part, into two schools, the aristocratic and the democratic. The one seeks the *intensive* development of humanity, but its gains are insignificant because confined to an insignificant minority. The other seeks the *extensive* development of humanity, but fails of its end for lack of differentiation. The infinitesimal progress of an infinite number is of doubtful significance. Plato, first among social philosophers, appreciated the importance of division of labor, and carried the idea into every department of social life. For him to sympathize with a leveling democracy was impossible. But if he believed in specializing the better few for the higher functions, no man more than he avoided the egoism of aristocracy. It is one thing to set aside the few for the sake of humanity; it is another thing to set aside humanity for the sake of the few.

Full of his "divine inspiration" Plato embarked for Syracuse at the invitation of its young ruler, whose interest in the ideal state seemed to promise much for its realization. We hardly need the vague tradition to tell us the inevitable result. It was with less confidence in the beneficence of absolute power and a keener sense of the inertia of human nature, that Plato in later years again tried to solve the problem of social organization. In *The Laws* we see the same Plato with the same ideals and the same temper, but his reliance is otherwise placed. The election of officers shows his distrust of kings, while the intricate system of indirect election shows his old distrust of democracy. But this state has a constitution. Rulers cannot be trusted to preserve the ideals of the state. The isolation of this new state, the prohibition of commerce and the amazing restrictions upon freedom of speech and of belief reveal the larger sense of difficulty born of experience. We are glad Plato had no second opportunity to experiment. He was a vehicle of

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"divine inspiration," but not a practical manager of men. The monstrous evils of an untamed individualism could not escape his notice, but while sound in all his instincts toward life, he was not a reformer or a statesman.

The practical temper of Aristotle prepares us for a very different proposal. But while showing a strong inclination to criticise his master, not always with fairness, he is in substantial agreement with the latter's later scheme. He puts a greater emphasis than did Plato upon the individualistic side of this social organization and doubtless had a keener sense of its importance, but his conception of the state and its functions is not less socialistic than Plato's.

Dr. Pöhlmann's summary and analysis of these great productions leaves little to be desired in comprehensiveness, thoroughness and fairness. The book can hardly be ignored by future students of the subject.

H. H. POWERS.

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National Life and Character: a Forecast. By CHARLES H. PEARSON. New York, Macmillan & Co., 1893.—357 pp.

Mr. Pearson was a scholar of high attainments and a man of the world, who had seen and participated in the most important developments of British imperial policy. He was also a student who displayed in history and politics powers of observation that are usually predestined to the service of natural science. His intellectual courage, too, was perfect. Discovering traits of national character that most of us fail to see, or refuse to look at, he observed them minutely and described them calmly. Reasoning upon them with great ability, he believed that they are working themselves out in tendencies that must profoundly affect the future of the white races. He concluded that we are approaching the stationary order in society and the old age of humanity. His book is painfully depressing unless one can react vigorously against its argument. By way of preparation for it one ought to ascend Mount Ararat with Dr. Bryce, or at least climb the Matterhorn with Dr. Parkhurst.

The premises of Mr. Pearson's melancholy judgments are elaborated in an original and fascinating chapter on "The Unchangeable Limits of the Higher Races." Hitherto the white races have been progressive and buoyant because they have had unlimited room for expansion. But the temperate zone is filling up. We shall not discover

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another North America or a new Australia. This certainty has not disquieted us, because we have been expecting to dispossess the dark races of Africa and Asia when the necessity should arise. This expectation, as Mr. Pearson shows, has grown out of the experience of European colonists in contact with American red men and native Australians. But these, he reminds us, were not industrial races. The Chinese, the Hindoos and the negroes, he contends, cannot be exterminated. Natal, he affirms, is bound to pass more and more into the hands of the colored race, and Africa, north of Natal, will remain negro. Central Asia will be peopled from China. Great parts of Southern and Central America cannot be peopled by the white race. If the Indians do not supersede the descendants of Spaniards, negroes or Chinamen will. All this is because climate is not the chief obstacle to further white colonization, as has been popularly supposed. Artificial modes of life that might overcome the difficulties presented by physical nature, will not really help matters, because the industrial dark races can multiply where whites cannot. It is the unequal rates of increase of white and dark in any environment to which the one race is adjusted and the other is not, that will forever confine the white races within their present limits.

Europe and North America, then, must slowly fill up. Opportunities for individual enterprise and daring will disappear. The change will affect the character of the race for vigorous originality. Mr. Pearson thinks that we see already a decline of speculative thought, and the beginnings of a decay of mechanical invention. With impaired faith in himself, the individual will trust more and more to the state. State socialism will bring with it a stationary social order, and population and wealth will cease to increase. General discouragement will impair the intellectual energy of the people. These tendencies will be exaggerated (1) by the necessity of maintaining standing armies — because, for many years, the nations of the temperate zone will try to encroach on one another, or upon uncivilized parts of the world — and (2) by the concentration of population in cities of monstrous dimensions. City life is changing for the worse. It is destructive of physical stamina, and unfavorable to the privacy and self-respect without which family life cannot grow to perfection. The family is, in fact, Mr. Pearson argues, a declining institution. It is being crushed between the state and the interests of individualism. The marriage of suitability has been displaced by the marriage of inclination. The tie between husband and wife is therefore becoming less permanent than it was, and the tie between

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parents and children is weaker. The changed relations between master and servant have taken away an efficient safeguard of family feeling, and the tradition of a fixed home has been destroyed. A consequent decay of character is to be expected. Austere Puritanism, with its strength and its shortcomings, has gone forever, and is replaced by a sensuous, genial and fibreless society.

That these speculations contain a vast amount of truth cannot be denied. But it happens sometimes that the observer who sees what others overlook, is strangely oblivious to what others see. Mr. Pearson has failed to allow for changes that must take place in the dark races if they ever enter fairly into industrial competition with the whites. The moment they attempt seriously to rise to a higher standard of living their birth-rates will fall; but unless they make that attempt, they must yield before Western civilization. China, for example, which Mr. Pearson evidently regarded as a formidable menace, has amazed the world by its weakness in the face of Japanese invasion. City life and the family institution are in a transition stage. A type of the family that is ethical rather than religious or proprietary, is being evolved. Electricity will scatter much that steam has concentrated. Rural life has a future of new and great promise. It is too early to pronounce humanity senile.

F. H. GIDDINGS.

Ethics of Citizenship. By JOHN MACCUNN, M.A., Professor of Philosophy in University College, Liverpool. New York, Macmillan & Co., 1894.—viii, 223 pp.

The Sphere of the State. With Special Consideration of Certain Present Problems. By FRANK SARGENT HOFFMAN, A.M. New York and London, G. P. Putnam's Sons, 1894.—viii, 275 pp.

The Nature of the State. By DR. PAUL CARUS. Chicago, The Open Court Publishing Co., 1894.—viii, 56 pp.

Amid the prevailing deluge of crude and ill-formulated essays on social and political topics it is a real pleasure to happen upon a work like that of Professor Maccunn. His unpretentious little volume is designed "to connect some leading aspects of democratic citizenship with ethical facts and beliefs." Without any air of sounding the profoundest depths of philosophy, he presents in a simple and extremely lucid style, and with a delightfully clean-cut analysis, the

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outline of a sane theory of democratic politics. With de Tocqueville, the author accepts democracy as an inevitable and an established fact, and seeks to set forth principles on which the perils that attend its sway may be avoided. The conservatism that characterizes his thought brings him into close sympathy with Burke, to whose political wisdom he renders the frankest homage through abundant references and quotations.

"Equality," in Professor Maccunn's first chapter, is deftly stripped of all the exaggerated meaning which revolutionary fervor has attached to it. "Fraternity" then is presented as a principle, depending not on half-morbid sentimentalism, but on the moral and material necessities of humanity, in which it is too firmly fixed to be overcome by the forces of individualism. The "rights of man" are criticised on Bentham's lines, as aspirations rather than actual privileges; though the author is not prepared to confine the term right too narrowly to what has been endowed with a legal sanction. It seems to me that Professor Maccunn lapses from his usual precision when (pages 53 *et seq.*) he enumerates certain "conditions of well-being" which, together with "such as these," he thinks may well be called rights before they become law. And it is especially confusing to find him declaring that the name of right "cannot be reasonably denied" to the claim to the parliamentary vote. This is surely opening the gates wide for that subjective standard which the author clearly sees to have been a cause of endless confusion. So again when he asks: "Is it false or unnatural to say that a child has a right to a careful up-bringing by parents," beyond what the law enforces? he is obviously on uncertain ground. Falsity or unnaturalness (whatever that may mean) can be affirmed or denied only after a definite meaning has been attached to "right." This word, as no one realizes more surely than the author, is continually used in two or more distinct senses. He distinguishes these senses, but fails consistently to enforce the distinction.

Professor Maccunn's plea for the rule of the majority is acute and stimulating, and abounds in happy thoughts, with obvious suggestions of modern political questions. The "tyranny of the majority," so dreaded by all conservatives, has no especial terrors for him. "That very inability to persist in a settled policy, with which its critics taunt democracy, furnishes some presumption against its pursuit of a course of consistent oppression."

It is not necessary to follow the author through his chapters on political consistency, democracy and character, *etc.* They all abound

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in gems of thought and expression, and the reader will be forced to admit at the end that a political essayist of marked promise has appeared upon the stage.

Hoffman's *Sphere of the State* was written, the preface informs us, not for advanced students of political science, but "for the average intelligent beginner." This choice of an audience was the author's great mistake. He should have written first for advanced students; this would have forced him to think out and formulate with some precision the fundamental conceptions of his politics, and would thus have put him in a much better condition for confronting the intelligent beginner. As it is, the book exhibits much immaturity and confusion of thought. In presenting its contents to a college class as lectures, the author must have employed means of making himself understood which he has not found available in the case of the reading public.

Professor Hoffman's conception of the state seems to have been formed under the influence of that school of dreaming which is best represented in our literature by Mulford's Apocalyptic rhapsody, *The Nation*. The most abstract possible idea of social humanity is taken as a working principle for the solution of actual political problems in separate communities. In his opening chapters Professor Hoffman does indeed adopt from recent writers of a juristic bent the distinctions and qualifications which alone can make the abstract idea of the state of any consequence save as an instrument of intellectual gymnastics; but these distinctions and qualifications remain but momentarily in sight. The ultimate and conclusive reason for the author's views, whether upon education, property, the church, taxation or anything else, is that "the state is the organic brotherhood of man"; and the distinctions between abstract state, concrete state, nation, government and commonwealth, once noted, cease later to affect the author's thought or expression. Perhaps there is some reminiscence of a logical distinction in the typographical discrimination between "State" and "state"; but investigation of this point has left the reviewer in doubt as to whether the variation in the types has its source in sound philosophy or in defective proof-reading.

In his historical allusions, Professor Hoffman is not very fortunate. For example, his interpretation of Hebrew history, on which he lays particular stress, is badly marred by an apparent belief that Abraham and Isaac post-dated the monarchy, and that Jesse was one of the kings (page 20). On the practical questions as to corpo-

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rations, taxation, education, *etc.*, there is much in the book that is unquestionably sound. That the author's *Politik* varies from the sensible at times, is in most cases due to the disturbing influence of his *Staatslehre*, which is so unnecessarily dragged in at every turn. Among the passages to which the author should direct particular attention in his second edition is that on pages 32–34 where he points out

> the difference between a law and a statute — a very important difference, but one too often overlooked. A law is a requirement of the State, while a statute is a decree of the government. The former can never be wrong. The latter is not often unmixed with error. . . . A man ought never to disobey a law, but he may often be called upon to disobey a statute. . . . A judge is not appointed to interpret and administer the laws, but to interpret and administer the statutes.

There are novelties of thought and nomenclature in this passage that, if properly expanded, might well revolutionize the sciences of jurisprudence, ethics and constitutional law.

Dr. Paul Carus thinks that the Chicago Anarchists should have been prosecuted not for murder and conspiracy to murder, but for treason: and he believes that Chief Justice Paxson of Pennsylvania was to be commended for bringing this latter charge against the Homestead strikers. The little essay on *The Nature of the State* is designed to set forth the philosophic grounds for the author's judgment.

The first half of the work embodies a very clear exposition of the concept of the state, as a real entity. Extreme individualism is effectively combatted in favor of "societism" — a term which, if not as old, is probably as justifiable, as the purist's *bête noir*, sociology. The latter half of the essay, where the author treats of the right of revolution, is pretty hard reading. It gives evidence of a serious difficulty in the author's mind — a difficulty that confronts every philosopher who, with a high appreciation of the reality and importance of the state, cannot, after all, bring himself to admit that the state is the ultimate interpreter of duty to the individual. Dr. Carus talks of the *jus naturale* and the "inalienable rights of citizens," and declares that the state has "no right" to pass such and such laws. But while committing himself thus to the anarchist's premises, he very carefully refrains from drawing the logical conclusions; and instead of the out-and-out duty of the individual to resist by every means encroachments on his inalienable rights and to disregard

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laws that the state has "no right" to pass, we have such moderate doctrines as this:

> Upon him who is convinced that the laws are immoral, the duty devolves to use all legal means in his power to have them repealed.

But why merely "legal" means, when the whole question is in the realm of the *jus naturale*, far above the sphere of mere legislation?

Again:

> All positive law is valid only in so far as it agrees with the natural law; when it deviates from that, it becomes an injustice and is doomed.

The anarchist, who admittedly is as well acquainted with the content of the *jus naturale* as any other man, concurs exactly in this sentiment; but instead of meekly sitting down and nursing a sentiment that the invalid enactment is doomed, he constitutes himself an active agent in the execution of the doom.

> Resistance is right when the state-authority comes into conflict with moral laws. . . . With all this unreserved appreciation of the revolutionary principle, we are by no means inclined to say that it is our duty to resist any and every immoral law.

In other words, it is not always our duty to do right. Your anarchist will very emphatically announce that his conception of duty is much more rigorous than this, and that he will act upon it, *ruant urbs populusque.*

It is but just to say that these quotations do not contain what seems to be the essence of Dr. Carus's doctrine. He appears really to have the idea that subjective convictions on moral questions are to be subordinated to the principles embodied in the legislative expression of the state's will, and that when these principles cease to harmonize with the general sentiment of the community, a readjustment must be affected, but only through the regular action of the state's organs. Such an idea, however, is entirely lost sight of in the citations I have made, and indeed can never be logically reconciled with the notions of natural law and natural rights which the author seems so loth to abandon. The clear development of this conception requires, moreover, a radical distinction between state and government, and above all, such discrimination in the various senses of "right" and "duty" as shall rescue the thinker from the inevitable consequences of a confusion.

WM. A. DUNNING.

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History of the Philosophy of History. By ROBERT FLINT. Vol. I: Historical Philosophy in France and French Belgium and Switzerland. New York, Charles Scribner's Sons, 1894. — 706 pp.

The learned author of this work is attempting to do for the philosophy or science of history substantially what Janet has done for political philosophy. His plan includes two more volumes, one devoted to the historical philosophy of Germany, and another to that of Italy and England. If completed on the scale of the present volume, they will contain a detailed and systematic account of "the course of human thought in its endeavors to explain human history"; in other words, "of the rise and progress of reflection and speculation on the development of humanity." The aim of the work, as the author further states, is both historical and critical. That is, he not only attempts to outline the theories as they have appeared, observing both their historical and logical sequence, but he subjects them to criticism in order to ascertain their merits and defects, their relative truth or falsity. This method of treatment is here applied for the first time, and on a large scale, to the field of history.

In an introduction of nearly two hundred pages Professor Flint clears the way for the special and systematic portion of the work. He unfolds in this his view of the nature of history, of the application of the terms science and philosophy to the subject, of the distinction between history and historiography. The broadest possible view of the subject is obtained by adopting the distinction between nature and history which Droysen has made familiar. Not only the possibility, but the existence, of a science of history is affirmed, and Guizot is assigned the foremost place among its founders. Still, the nearest approximation which the author makes to a definition of this science is substantially that it is the application of the scientific method to the subject-matter of history, ending in the discovery of certain laws of human development. Closely related to it is the philosophy of history, which traces the relations in which it stands to other departments of knowledge. These together form the subject-matter of this work.

Preparatory to his entrance upon the study, Professor Flint outlines the development of the three fundamental ideas without which a philosophy of history is impossible, *viz.*, progress, freedom and humanity, or the unity of the race as to its essential nature. He shows that previous to the close of the middle ages these ideas were but dimly apprehended, and that by only a few teachers. In France

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in the sixteenth century Bodin saw that the fact of progress underlay human history, but he was chiefly concerned with law and political science. Bossuet is, of course, the representative historian of the seventeenth century, but his thought moved wholly within the lines of the orthodox religious views of the age. The eighteenth century learned to study man as man, and grasped the idea of progress more clearly than any previous age. Economic science was also developed. These were conditions essential to the scientific treatment of the subject, and something like a philosophy of history begins to appear. The two great services rendered by Montesquieu were these, that he brought history and economics into alliance for the explanation of social phenomena, and that he so clearly taught the doctrine of historical relativism as to win educated Europe over to its acceptance. But among the men of this period who contributed to the wealth of historical ideas, Professor Flint is inclined to give the first place to Turgot, and this because of the profound view of social progress as the basis of history which he gave in his discourses at the Sorbonne. Unlike many of his contemporaries, he was able to do justice to the past, while with them he believed in the perfectibility of the race. "If the philosophy of history," says the author, "be merely a scientific representation of universal history as a process of progressive development, Turgot has probably a better claim than any one else to be called its founder." Condorcet, who lived under the full influence of the revolution, carried the ideas of progress and humanity to their utmost development, and with him the work of the eighteenth century in this domain of thought closed. It is evident that the efforts made to develop a philosophy of history had up to that time been very few and imperfect.

The revolution greatly strengthened the hold which the ideas of progress, liberty and humanity had over the minds of men. In connection with the growth of natural science the theory of evolution was perfected. These facts were favorable to speculation about human development, and by two of the French thinkers of the present century, Cousin and Comte, notable attempts have been made to construct a philosophy of history. The former, using suggestions derived from Hegel, and making psychology his starting point, regarded history as the expression of the progress of human thought according to a preconceived order. The latter, like the socialists with whom he was closely connected, worked under the strong influence of natural science. The result was the view that history is a department of social physics, though with a method largely its own.

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The conception of law pervading it is brought over from the natural sciences. The idea of progress is analyzed at length, but its stages are fixed according to the famous formula which Comte borrowed from St. Simon. Imperfect knowledge of history made the generalizations of Comte, as well as those of Cousin, misleading and unsatisfactory.

It is not strange, then, that in these later years a critical school has arisen, whose members have rejected *a priori* reasoning concerning history, and have based their conclusions on the most thorough study of the facts. Cournot and Renouvier are the leading representatives of this tendency in France, and only by the labors of such as they, extended over a long period of time, can the foundation be laid on which something like a satisfactory philosophy of history can be built. That, at least, is the impression which the reviewer has drawn from Professor Flint's book. It is a work abounding in thorough and suggestive criticism of historians as well as philosophers, a monument of learning and research. To the ordinary reader its account of the development of historiography is likely to prove its most valuable feature.

H. L. Osgood.

Cases and Opinions on International Law. With notes and a Syllabus. By Freeman Snow, Ph.D. Boston, The Boston Book Co., 1893. — 586 pp.

Treaties and Topics in American Diplomacy. By Freeman Snow, Ph.D. Boston, The Boston Book Co., 1894. — 515 pp.

These two volumes constitute an interesting and valuable addition to the works specially designed for the use of persons pursuing the study of international law and diplomacy. We have had various students' editions of treatises on those subjects, and we have had manuals specially prepared for the use of students; but the two volumes now before us embody the first attempt to furnish the student, in convenient form, with documentary material to work upon.

While I take pleasure in expressing an unhesitatingly favorable opinion of the usefulness of these volumes, I must admit that when, after reading the preface to the *Cases on International Law*, I first examined what followed, I felt a sense of disappointment. In the preface the author states that the object of the compilation is to

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employ, in the teaching of international law, the "case system" introduced into the Harvard Law School a score of years ago by Professor Langdell.

> With this view [says the author] it has been the almost invariable rule to give the decisions of the courts in the exact language of the judges, though necessarily leaving out, in some cases, the less pertinent parts. In this respect this volume differs radically from Mr. Pitt Cobbett's excellent work on the same subject.

Mr. Pitt Cobbett follows the plan of summarizing cases in his own language, with a view to bring out the points decided by them. In the work of Dr. Snow, there are upwards of two hundred "cases and opinions." Of these, about a hundred and twenty-five consist of extracts from law cases, and the rest of extracts from text-writers or of summaries of cases judicially or diplomatically treated. It is true that many of the extracts from text-writers, as well as many of the summaries, relate to cases, either diplomatic or judicial; but to give some text-writer's statement of a case, or one's own summary of it, does not constitute a radical departure from Mr. Cobbett's plan. Nor can it be maintained that to give enough of the opinion of a judge to disclose the point decided by him, is an application of the inductive method of teaching, as illustrated by the "case system." A judge's statement of a principle may be good or bad, according to his ability. The principle may be better stated by some text-writer. It is in the study of the whole case, and the deduction of what was decided from the facts and the opinion, that the student acquires the faculty and the habit of legal ratiocination.

Apart, however, from this phase of the matter, there is an undoubted advantage in the use of concrete illustrations of principles, which is, I think, generally recognized; and this advantage is secured whatever may be the form in which the illustration is given. For this reason alone I should consider the present collection of cases and opinions a valuable publication. But I desire to express my special appreciation of the "syllabus," in which the author has given an admirable list of references to treatises as well as to judicial reports. In this relation Dr. Snow pertinently observes:

> It is indeed the justly celebrated authors of treatises on international law who have analyzed and systematized the subject, and who have reduced it to a science. A collection of cases and opinions, moreover, must necessarily leave many gaps, to be filled by means of text-books or lectures. And it is the purpose of the syllabus — a leading feature of this book —

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to make available the opinions of a number of the most eminent writers, of different countries, by grouping references to their works under specific heads.

In the *Treaties and Topics in American Diplomacy* we have a collection of our more important treaties and conventions, given textually or summarized, together with notes upon them, and systematic discussions of leading topics, such as the Monroe Doctrine, the Fisheries Question and the Behring Sea controversy. In these discussions the author has exhibited not only careful and thorough study of his subjects, but candor and impartiality in his treatment of them. His aim has been not to advocate theories and establish conclusions, so much as to present full and frank statements for the student's enlightenment.

J. B. MOORE.

Municipal Government in Great Britain. By ALBERT SHAW. New York, The Century Co., 1895. — viii, 385 pp.

The Englishman at Home: His Responsibilities and Privileges. By EDWARD PORRITT. New York, Thomas Y. Crowell & Co., 1893. — xiv, 379 pp.

Mr. Shaw's magazine articles in the field of municipal government in Great Britain have attracted so much attention that his book will be welcomed by all who are interested in municipal problems. This book, however, is much more than a mere collection of fugitive essays. It contains much work which has not been previously published, and those chapters which have drawn considerably upon Mr. Shaw's former publications have been rewritten. The volume, therefore, gives a good description of municipal government in Great Britain at the present time.

In the introductory chapter on the growth and problems of modern cities, attention is called to the fact that the rapid development of municipal life is not by any means peculiar to this country, as we are often apt to suppose. The same movement is shown to be characteristic of Europe, and particularly of England. The massing of population in large cities is a sociological fact whose existence cannot be denied, and the tendency at the present time is towards municipal rather than rural life. Mr. Shaw's book is not intended, however, as anything more than a description of municipal conditions in Great Britain. He disclaims in his preface the intention to derive any particular lesson other than that of a warning for those in charge

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of American cities. Expressly repudiating any desire to impose the English organization on the American cities, he recognizes that "we must deal with our own problems in our own way." At the same time, notwithstanding this disclaimer, nothing is plainer than that Mr. Shaw has become thoroughly convinced that the English method of municipal government is the ideal method.

The great success which has attended the remarkable development in English municipal life during this century is a sufficient evidence, indeed, that the English municipal organization of the present time is a good one for English conditions. But the most characteristic feature of this organization, which Mr. Shaw particularly approves, namely, the concentration of all powers in a town council, is one which we have tried in this country, and which we have been obliged to discard. Nothing is plainer in our development than the growth of the powers of the mayor; and though the result may be, as Mr. Shaw remarks, "a periodically elective dictatorship," it will require more than the success of the English in working the town-council plan to cause us in America to return to it.

The development of the office of mayor in this country has been based upon a supposed analogy between city government and state government, in respect to the separation of executive and legislative power. Mr. Shaw is quite right in denying that there is any such analogy. The work of municipal bodies is altogether administrative, and the adoption of the mayor system is undoubtedly the adoption of a monarchical principle. In discussing this matter, however, it is necessary to bear in mind not only that there is no fair analogy between city and state government, but also that the former, under the system which has been in vogue in the United States, and in accordance with which the legislature has been permitted to interfere continually in the affairs of cities, was in fact a government by a council. The council was not, however, a local one, and it therefore felt no responsibility to the people whom it governed. It was responsible only to the people of the state at large. To the fact of continual legislative interference, it would seem that Mr. Shaw, in the slight comparison which he makes of English with American conditions, has not given sufficient attention. Further, he regards as unsound the English principle in accordance with which matters of a central character have been so generally attended to by special organs provided for the purpose, apart from the municipal organizations. The separation of the general functions of government over which the legislature or some central authority must exercise a control, from the

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purely local business in which the municipal corporations should have a pretty free hand, does not seem to receive from Mr. Shaw adequate recognition as a means of attaining good municipal government. This differentiation of functions has been of enormous influence in England in taking away from the legislature the temptation to interfere in matters which are purely local. In this country we have adopted the plan which Mr. Shaw advocates, of putting in the hands of the larger municipal corporations the care of a long series of matters which are not local but general in character. Over these matters the legislature, which is the only organ charged with the general interests of the state, must exercise an important control. Becoming accustomed to the exercise of a control over municipal corporations so far as they are acting as agents of the state government, the legislature has failed to observe the distinction which has been made in England, and has extended its control over local matters also. Perhaps the demand which Mr. Shaw makes for the assumption by the municipal corporations of more functions of central administration, such as the care of the poor and the schools, would, if allowed, place the English municipality ultimately in the same position toward the legislature as that of the American municipality at the present time.

In connection with this matter of central control Mr. Shaw fails to notice another point of extreme importance, namely, the method which has been provided in England for the enactment of special laws. Such legislation is hedged about by so many formalities, must conform in so many particulars to general statutes, and in so many cases requires for its validity the approval of some central administrative authority, that its dangers have been very largely avoided.

But apart from this comparison of English with American conditions, and apart from this desire which is evident, although it is expressly disclaimed in the preface, to apply the English system to American conditions, Mr. Shaw's book is deserving of great praise. The chapters on the work of the various cities are extremely interesting, and show an intimate acquaintance, not merely with the municipal machinery, but also with the way in which it works and with the actual conditions of English municipal life. In general the description of the organization of the English city in Chapter III is accurate. I notice, however, contradictory statements with regard to the borough auditors; on page 32 it is said that the two elective auditors are chosen by the council, while on page 65 they are said to be chosen by the burgesses. The latter statement is correct. It is to be noticed, finally, that the work is accompanied by an excellent index,

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and that the several appendices contain some very valuable material, among which the abbreviated report of the late commission appointed for the unification of London is of peculiar interest in connection with the proposed consolidation of the towns which will probably form the "Greater New York."

What Mr. Shaw has done for English municipal government, Mr. Porritt has done for English social and governmental institutions in general. This work is not confined to purely governmental matters. It gives a very good description of the central and the local organization, but it contains as well chapters on the Church of England, the labor legislation of the present century, the land and its owners and the daily press. In a series of appendices is contained also a great deal of valuable information, mainly of a statistical character, such as the aggregate cost of local government in England, municipal indebtedness, salaries under the municipalities, the aggregate annual cost of the poor-law system, the distribution of pauperism, the curriculum of the elementary day schools, *etc.*, *etc.* In the first chapter Mr. Porritt calls attention to the interesting fact that the Reform Bill of 1832 resulted in the reform measures connected with municipal government, but that the Reform Bill of 1884, which extended the franchise to many of the rural laborers, resulted at once in a reform of the county organizations, and in the quickening of rural administrative life.

The work seems to have been, as a general thing, accurately done, though attention must be called to the fact that the new Local Government Act of 1894, which went into effect last November, has changed in many particulars the system of administration as described by Mr. Porritt. On page 25 it is said that the members of the rural sanitary commissions are elected from the members of the local boards of guardians. This is not quite accurate, since, under the old system, the rural guardians were to act as the rural sanitary authority. In case the district consisted of urban and rural districts, the guardians from the urban districts did not act in sanitary matters at all. But this is a matter of very slight importance at the present time, inasmuch as since the Act of 1894, the members of the rural district councils are to act as guardians in the rural districts.

Of course it cannot be expected that a book of the size of *The Englishman at Home*, and covering as much ground as it does, should go into much detail. At the same time, Mr. Porritt has had the good fortune to be able to seize the most salient points in the English administrative system. Indeed, his work is, on this account, more

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valuable in some respects than that of Mr. Shaw. He points out the system adopted for the passage of private and local bills, and lays greater emphasis upon the administrative control over the various local corporations, which has grown out of the administrative legislation of the present century. As this is one of the most important changes which has been introduced into the English system, and as it has completely modified the old system of local self-government, no consideration of English institutions as they exist at the present time is complete, or even adequate, without an explanation of its effect upon the English system of administration.

A fault common to both of these books is that they are unaccompanied by references of any sort. This fact makes it extremely difficult to control the statements of the authors.

F. J. GOODNOW.

Europe, 1789–1815. By H. MORSE STEPHENS. London, Rivington, Percival & Co.; New York, Macmillan & Co., 1893.—423 pp.

The Revolutionary and Napoleonic Era, 1789–1815. By J. H. ROSE. Cambridge, University Press; New York, Macmillan & Co., 1894.—388 pp.

The period covered by these two books has not been neglected by historians. The dramatic intensity of its various phases, the picturesqueness of its leading characters, and its place as the connecting link between the old and the new conception of government, necessarily cause it to be a favorite period for research. Yet in nearly all the histories covering different portions of this period, some of them works of the highest merit, two grave defects may be found. The first is the failure properly to emphasize the fact that between the Napoleonic era and the Revolutionary era there are no hard and fast lines to be drawn, and that the two periods must be studied as one and the same product of the political, intellectual and religious upheaval of the eighteenth century. The second is the undue concentration of the attention upon France, neglecting sufficient consideration of the internal condition and history of the other European countries. This is naturally most noticeable in the histories of the Revolutionary Epoch; Napoleon's career necessarily draws the attention of the writer more to Europe at large. It is gratifying to note the appearance of the two volumes before us, each of which purports to avoid the common faults and to give us in con-

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venient size a *résumé* of the historical development of Europe from 1789 to 1815.

Mr. Stephens's volume constitutes period seven in the Oxford "Periods of European History," edited by Arthur Hassall, M.A. A scholarly work would be expected from Mr. Stephens, whose extended researches into French Revolutionary history have made him one of the most thoroughly equipped workers in this field. Nor is one disappointed after reading the book. To a great extent the author has succeeded in preserving the judicial attitude, and in casting aside English prejudices in his estimates of the leading characters. The temptation to neglect the history of Europe while describing the more vivid features of the upheaval in France is successfully resisted. He has skillfully woven together the stories of even the minor European powers, and has enabled the most cursory student to get such a grasp of the whole subject as is utterly unobtainable from many more extended works.

On the other hand Mr. Stephens has not neglected to emphasize the fact that France is the central figure, and that the other countries group themselves around her. He summarizes the intellectual revolution, the reaction against the church, the social inequalities and the foreign influences, but he does not find in these the true foundations of the revolution. "The causes of the movement," he claims, "were chiefly economical and political, not philosophical and social: its rapid development was due to historical circumstances, and mainly to the attitude of the rest of Europe."

If he had had more space, he might have made more clear his reasons for slighting the social phase of the movement, which so vitally affected economical and political conditions, and rendered France a fertile field in which to sow the philosophical abstractions of Rousseau. He correctly describes the condition of the peasantry in France as far better than that in certain other European countries; yet, in his eagerness to correct a popular misconception, he fails adequately to indicate the real misery of the French peasant. This may sometimes give the reader a false impression of the conditions under the *Ancien Régime*.

In a work of this nature it would be impossible to expect more than the merest outline of the events of the French Revolution. Considering the space at the author's command, a remarkably complete account is given. The ever-present necessity of condensation occasionally results unfortunately. The bald statement that Robespierre "was a profoundly religious and virtuous man," and

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that "the chief cause of his hatred of Hébert and Danton was his belief that they were immoral atheists," is one that must be questioned. A fuller analysis of Robespierre's character would doubtless have modified the statement. The conventional painting of Robespierre is in too black colors, but his selfishness and ambition cannot so easily be overlooked.

In his treatment of Napoleon the author is especially just. We may reasonably expect a far different conception of the great conqueror in the histories now appearing from that to be found in earlier works. Napoleon's character was utterly incomprehensible to his contemporaries, and their erroneous judgments have been adopted by the majority of writers. The result has been either excessively eulogistic or uncharitably denunciatory. Mr. Stephens has profited by the painstaking study of the present generation, and shows us Napoleon as a really great reformer, the creature of the revolutionary spirit, yet necessarily hampered by conditions that were due to the sudden overthrow of long-established institutions.

Mr. Rose's work is published in the Cambridge Historical Series, which is somewhat different in its scope from the Oxford series. The latter endeavors to give a general survey of Europe in successive periods; the former sketches the history of modern Europe, but deals with the different countries in separate volumes. However, when an epoch such as this under consideration is reached, the Cambridge writers abandon their own in favor of the Oxford plan.

In many respects Mr. Rose should be as highly commended as Mr. Stephens. He has labored conscientiously to present French history in its proper relation to the history of the other European countries. If we were to judge the books strictly according to the historical importance of the subject-matter, we should be compelled to say that the sense of historical proportion is better preserved in this book than in that of Mr. Stephens. But as the chief need for more general studies in this period is to throw a better light on European affairs, the Cambridge work suffers in the comparison. Mr. Rose could have spared some of the detail in his chapters on French affairs and expanded his discussions on the larger European problems. Yet some of his work in the latter field is admirable. For instance his first chapter, on the political and social weakness of Europe, while not so original as some portions of Mr. Stephens's discussion, is an excellent portrayal of the conditions confronting Europe in the last decade of the century. The spirit of Mr. Rose's work is commendable. He has tried to free himself from

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insular prejudices and to write in the attitude of dispassionate criticism. In the main he has succeeded.

The incidents of the French Revolution are so theatrical that it has seemed difficult for the most sober historians to abstain from coloring their pictures, and from throwing a far too lurid light upon events which, separated from their connection with the movement at large, are really of minor importance. Mr. Rose's work is quite free from this defect, as is particularly to be seen in his account of the storming of the Bastile.

His treatment of the Napoleonic Era is praiseworthy so far as the narrative is concerned, but his conception of the character of Napoleon is not so satisfactory. He assumes throughout almost a hostile attitude toward the great French leader. His praise is grudgingly bestowed, and his criticisms of Napoleon's plans and actions are at times unreasonably harsh. One is constantly reminded while reading this portion of the book, that the writer is an Englishman, with an Englishman's inherited prejudices.

Taken as a whole, however, Mr. Rose's work may well rank with that of Mr. Stephens. The two books are substantial additions to the library of the general student of history.

C. E. CHADSEY.

DURANGO, COLORADO.

Selections from the Correspondence of Thomas Barclay, formerly British Consul-General at New York. Edited by GEORGE LOCKHART RIVES, M.A., late Assistant Secretary of State of the United States. New York, Harper & Brothers, 1894. — 429 pp.

This volume exhibits an advance in thought, if not in time, beyond the managers of a certain historical society, who, in printing the diary of a Revolutionary character, carefully omitted the passages in which a member of a well-known family was spoken of as a Tory. Thomas Barclay "was an active and zealous loyalist." He was born in the city of New York in 1753; he died there in 1830. He died, as he was born, a British subject. He spent nearly fifty years in the service of the British government; yet his residence and associations were chiefly American, and his principal public services related to American affairs.

About six months after the battle of Lexington Thomas Barclay was married and took up his residence in Ulster County, where his wife's maternal grandfather, Cadwallader Colden, owned large tracts of land. His father, Henry Barclay, as rector of Trinity Church, represented

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that bulwark of the monarchy, the English Church; and although he died when his son Thomas was scarcely eleven years of age, it is doubtless true, as the editor surmises, that the boy was taught to believe "the Church of England the embodiment of all spiritual truth, the young king the ablest and best of rulers, and the system of government administered by Cadwallader Colden the perfection of human reason." Thomas Barclay's loyalist attachments led to his being driven from his home in Ulster; but instead of going to England and becoming a "drone," he joined the royal army, in which he served with great credit. At the close of the war, however, he found himself proscribed and his property confiscated; and he sought refuge in Nova Scotia, where he soon became a member of the provincial assembly and afterwards its speaker. In 1793 he was appointed lieutenant-colonel of the Royal Nova Scotia Regiment.

In 1796 Colonel Barclay was commissioned by the king as British commissioner or arbitrator, under article five of the Jay Treaty, to determine what river was intended under the name of the St. Croix, in the treaty of peace of 1783. This was the first of the transactions, beginning with the treaty of 1794 and ending with the treaty of 1871, by which the northern boundary of the United States has been determined. Americans claimed an eastern river, named the Magaguadavic, as that intended by the name St. Croix; the British claimed a western river, named the Schoodic or Schodiac. The latter was accepted as the river truly intended, but a compromise was made as to the waters that constituted its source. In this transaction Thomas Barclay bore a leading part, as is shown by his correspondence. Having examined the fragmentary papers on the subject in the Department of State, I am glad to find in this correspondence a clear and connected account of how the compromise was reached.

In January, 1799, Colonel Barclay was appointed to succeed Sir John Temple, deceased, as British consul-general for the Eastern States of America. He now returned to New York; and on his arrival he encountered a question — that of the desertion of seamen — which has only lately been made the subject of a conventional arrangement between the United States and Great Britain. To meet the difficulties occasioned by the numerous desertions at the port of New York, the legislature of the state passed an act to authorize the arrest of deserters. The act, however, was thrown out by the Council of Revision, on the ground that it was a commercial regulation, which pertained to the Federal Congress.

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As the days passed by, the events leading up to the war of 1812 began to develop. Complaints of impressment became frequent. British vessels hovered on the American coast, and in some instances boarded American vessels within the marine league. For a time the port of New York was virtually blockaded. In April, 1806, the British man-of-war *Leander*, while firing at an American coaster, killed the man at the helm. In the same month the first non-importation act was passed. Soon afterward French decrees and British orders-in-council began to vex neutral commerce. In June, 1807, occurred the attack of the *Leopard* on the *Chesapeake*. At the end of the same year came the embargo. Then followed the non-intercourse acts, and in time the war. These topics are all embraced in the correspondence before us.

At the outbreak of the war Colonel Barclay, his official functions being in suspense, went to England; but he was immediately appointed as British agent for prisoners of war in the United States. In this capacity he returned in April, 1813, to New York. In the following month he concluded with a representative of the United States at Washington, an arrangement in relation to the exchange of prisoners.

After the war Colonel Barclay returned to the post of consul-general at New York. His activities, however, were soon diverted into another channel. For the most part the boundaries between the United States and Great Britain remained to be marked or determined, and he was appointed as British commissioner under articles four and five of the Treaty of Ghent, to decide upon the title to Grand Menan and the islands of Passamaquoddy Bay, and to determine the boundary from the source of the St. Croix to the St. Lawrence. A formal award under article four was executed at New York, in November, 1817. But as to the boundary referred to in article five, from the source of the St. Croix to the St. Lawrence, the commissioners were unable to agree. Nor was this question settled till 1842, when Mr. Webster and Lord Ashburton made their famous treaty and adjusted it by a compromise.

The editorial work in this volume exhibits care that may fairly be called minute. Even the more obscure personal allusions in the letters are traced out and identified. But it is in the introductory observations, written in a clear, strong style, and forming a setting to each chapter of the correspondence, that the editor is especially happy.

J. B. MOORE.

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BOOK NOTES.

THE object of the pamphlet entitled *British Aggressions in Venezuela: the Monroe Doctrine on Trial*, by William L. Scruggs, jurisconsult for the government of Venezuela, is to set forth the case of Venezuela against Great Britain in the Guiana boundary dispute. This dispute is of long standing, but it is claimed by Venezuela that the British have recently made encroachments even on territory that was formerly admitted to be Venezuelan. These encroachments have as their object not merely the acquisition of territory, but the acquisition of the right to navigate the Orinoco. The British claims now extend to territory bordering on the mouth of that river, and, if they should be established, the right of navigation would follow. How far the Monroe Doctrine may be involved in this matter, is a question that depends upon the view one may take of the meaning and extent of that declaration, as well as upon the merits of the present dispute. Mr. Scruggs sets forth the case of Venezuela clearly and forcibly; and a presumption is raised against the extreme claims of Great Britain by the fact that she has avoided or declined arbitration, except upon conditions that would exclude from the reference a great part of the contested territory.

Albert, Scott & Co., of Chicago, have put students and teachers of our constitution under obligation by publishing in a single volume Madison's *Journal of the Federal Convention* (1893). In this form the invaluable history of the convention is much more available than heretofore for class-room work. The same firm have also put forth, in uniform style, a volume containing *The Federalist, and Other Constitutional Papers*, edited by E. H. Scott (1894). The "other papers" consist of a selection from Mr. Paul Leicester Ford's well-known collection of "essays published during the discussion of the constitution by the people." The Chicago firm's two volumes together constitute an admirably compact yet comprehensive basis for the study of our constitution's early history.

Professor Simeon E. Baldwin, in *The Three Constitutions of Connecticut* (reprinted from New Haven Historical Society Papers) traces the creation by ordinary legislation of provisions supplement-

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ing or affecting the fundamental instrument of government, and the development, thus, in Connecticut, of a constitution consisting substantially of both charter and statute. The writer then in a subsequent paper treats of the constitutional discussion and growth since the abandonment of the colonial charter, helpfully supplementing his work by a table of all amendments proposed since 1818, with the action upon each.

Two essays on local matters in Rhode Island are a result of graduate study at Brown University. In *The Development of the Nominating Convention in Rhode Island* Mr. Neil Andrews gives a clear and concise sketch of the transition in the four decades following 1790, from the practice of self-nomination, through the system of nomination by a caucus composed of legislators and of delegates from towns represented in the House by the opposite party, to the beginning of the later nominating convention. Mr. Charles Stickney's sketch of *Know-Nothingism in Rhode Island* merely adds a portion to the general history of the "Native American" movement, and a portion apparently not of marked importance. With each of these essays bibliographical suggestions would have been proper, and would have increased the value of the work.

Among the papers recently issued from the Historical Seminary of Brown University and published by the Rhode Island Historical Society, is one by Mary E. Woolley on the *History of the Colonial Post-Office*. It gives a brief sketch of the attempts to establish post-offices in the colonies previous to the act of Parliament of 1710, under which an inter-colonial postal system was organized. The patent granted to Thomas Neale in 1692, to receive and deliver letters and packets within the colonies, is also printed here in full.

In an essay on *The Southern States* (Putnam's, 1894) J. L. M. Curry attempts "the restoration of the South to its true place in the story of the formation and the history of our government." The work is simply a sketch of our constitutional history on the lines of *ante-bellum* state-rights doctrine, and so is an apology for the secession of 1861. There is nothing new or striking in the narrative or the arguments, but the author is as free from bitterness as from originality, and this in itself may be a sufficient justification for printing. His essay is commendable, also, in emphasizing the idea that former state-sovereignty theorists are logically able, since the war, to adopt the nationalists' view of our government; for the author sees that the *post-bellum* constitution is an essentially different one from that of *ante-bellum* days.

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Charles H. Otken's *Ills of the South* (Putnam's, 1894) is a serious attempt to analyze the causes which seem to be obstructing the prosperity of the author's section. The credit system and he lien laws, which play so large a part in the agriculture of the South, are set forth as especial sources of ill, though the author does not gloss over the shiftlessness of the farmers that is at the bottom of the matter. The inefficiency of the negroes as a laboring class, and the general social demoralization of which the race is a cause, are treated at length. The work, while of very unequal value on different points, is on the whole useful and suggestive.

In the first two volumes of General Viscount Wolseley's *Life of the Duke of Marlborough* (Longmans, Green & Co., New York, 1894) the career of the duke to the accession of Queen Anne is treated in detail. The work, as was to be expected, is preëminently a military history, though in the part before us political events occupy an important place. It contains a systematic defense of Marlborough's character, bringing his staunch Protestantism into bold relief. This is made use of to explain his treasonable desertion of James II. The biographer claims that Marlborough considered this course necessary to the preservation of the liberties of England, having warned James that he would abandon him if the king attacked the laws and the church. The moderate view taken of the duke's conduct toward William III is similar to that held by Ranke. These volumes form a substantial contribution to historical literature bearing on the period of the English Revolution.

In the new edition of *Essays Introductory to the study of the English Constitution*, edited by Messrs. Wakeman and Hassall (Longmans, Green & Co.), only few alterations have been made. The chief one is the revision of Mr. Henson's essay on "The Early English Constitution." The *Essays* are a product of collaboration by six English historians who have done active work in the propagation of historical knowledge. Professor Ashley, who writes on "Feudalism," has published his two volumes on "English Economic History." One of the editors, Arthur Hassall, who writes on the "Constitutional Kingship 1399–1485," is the editor of the series entitled "Periods of European History," for which he is to write a volume on Europe from 1715–1789. Mr. Oman and Mr. Wakeman have already written for that series, the one on Europe, 476–918, the other on the period from 1598–1715. Mr. Medley, who writes on "Parliament," has just published a manual of English constitutional history. These historians aim in the *Essays* to arrange the well-

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ascertained facts connected with the growth of England's institutions in such a way as may make the study of them more intelligible and more attractive to beginners. As the work is intended for beginners, the authors have slurred over many difficult points in order to make the development clear and simple. This sacrifice of absolute truth to perspicuity is reprehensible, but may be pardoned in view of the purpose of the volume. Bishop Stubbs's work has been used as a foundation. That the *Essays* have been successful in their object, the fact of a second edition is a concrete and ample proof.

Frances Gardiner Davenport, A.B., of Radcliffe College, has prepared a most useful *Classified List of Printed Original Materials for English Manorial and Agrarian History during the Middle Ages* (Ginn & Co.). The list begins with documents of the twelfth century, account rolls, court rolls, extents, rentals and customaries, subsidy rolls, text-books of manorial law and a topographical index. A general bibliography of the subject of English agrarian history during the middle ages is also given. Completeness is not claimed for the lists.

In a previous number of this QUARTERLY the first two volumes of *Les Archives de l'Histoire de France*, by Langlois and Stein, were reviewed. The third and concluding volume has now been published (Paris, Alphonse Picard). It is devoted to the material for French history which is deposited in the archives and libraries of foreign countries and in the libraries of France. Much general information concerning the archives of Europe is contained in it which will be found valuable by other than French investigators.

The Paris firm of Léon Chailley has finally decided to imitate the successful English Citizen Series. Under the editorship of MM. Benoist and Liesse a number of convenient little manuals, bearing the general title *La Vie Nationale*, have been planned and partly completed. M. Benoist himself has already published the initial volume, *La Politique*, and M. Gustave François has started the economic series by his book on *Le Commerce*. The works are not, as might be imagined from the title, of interest exclusively to Frenchmen. An attempt is made to give the facts, past and present, of other countries as well. Among the forthcoming volumes are those on the social question, banking, finance, agriculture, public works and a large number of administrative and political topics.

To the list of sumptuous volumes on the separate Livery Companies of London must now be added the *Records of the Hole Craft and Fellowship of Masons, with a Chronicle of the History of the Wor-*

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shipful Company of Masons of the City of London, by Edward Conder, Jr. (Swan Sonnenschein and Macmillan, 1894). The records of the Masons' Company are unfortunately extant only from the year 1619, those for the earlier years having been lost or destroyed by fire. For the preceding period Mr. Conder, himself the master of the company, has sought to compile the history from rather well-known sources. This occupies about one-third of the volume, and does not increase our information materially. The author wavers in his interpretation of the term free-mason. In one place he tells us that a free mason meant nothing more than a mason free of his guild or company, that is, a master mason. In another place he maintains that it signified a free stone mason, as distinguished from a mason who was employed in rough work. We are reminded of the importance of the masons in the cathedral building of the middle ages, of their curious secret history and of their international applications. The main body of the work consists of extracts and transcripts from the original records, and in so far supplements Herbert's well-known history. The book is fully illustrated and beautifully printed.

Of some interest to the economist is *A Catalogue of the Library of Adam Smith*, edited, with an introduction, by James Bonar (Macmillan, 1894). The introduction contains, among other things, a short history of Smith's library and of its dispersion, a copy of his will and an essay by John M. Gray on the various portraits of the master. The catalogue is supposed to contain about two-thirds of the original library, which numbered some 3000 volumes. It is noteworthy that only about one-fifth of the titles are devoted to history and economics. Mr. Bonar has performed his part of the work well, and has appended to each title a reference, with explanatory statement, to the passage or passages in Smith's works where the particular book is quoted or alluded to.

In a portly volume entitled *Wealth against Commonwealth* (Harpers, 1894), Mr. Henry Demarest Lloyd has endeavored to give a complete history of the growth of the Standard Oil Company. Unfortunately the work is so full of turgid eloquence and bombastic denunciation that it entirely overshoots the mark. The public is pretty well aware of the past misdeeds of this gigantic combination; what is needed is a dispassionate study of the real economic effects of the trust. This is what Mr. Lloyd has not given, and what no one can give who approaches the subject from the standpoint of the author. The book contains many interesting passages, but is on the whole a distinct disappointment.

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The German Verein für Socialpolitik has issued as No. 60 of its publications a study of trusts and monopolies in various countries under the title *Ueber Wirthschaftliche Kartelle in Deutschland und im Auslande* (Leipzig, Duncker und Humblot, 1894). The first part is devoted to Germany and contains ten studies by a number of writers on the more important separate trusts and "syndicates," all brought down to date. The second part is devoted to a study of the general situation in France, Austria, Russia, Denmark and the United States, over two-thirds of the space being devoted to the monograph on the United States by Dr. von Halle. Of considerable value for reference are the 125 pages devoted to a reproduction in English of the important trust charters, by-laws and agreements. We understand that this part of the volume is soon to appear in an English version.

A pleasant proof of the success achieved by the professors of economics in the law faculties in France is afforded by the new (third) edition of the *Cours d'Économie Politique* by Paul Cauwès, of the law faculty of Paris (Paris, Larose et Forcel). The work has now been expanded to four stately volumes and affords the most complete exposition of economics to be found in the French language. M. Cauwès differs from most of his countrymen in that he is well acquainted with the literature of economics abroad as well as at home. But the chief value of the new edition lies in the care and fullness with which practical questions of the day are discussed. To those who desire to keep themselves well informed as to the most recent development in France these volumes will be very welcome.

Students of railway problems will be attracted by the *Histoire des Grandes Compagnies de Chemins de Fer Français dans leurs Rapports Financiers avec l'État*, by Edmond Théry, the editor of *L'Économiste Européen* (Paris, 1894). This is a study of public railway policy in France, with especial reference to the conventions of 1859 and 1883. The volume contains many interesting facts as to the recent development. The author contends that the present situation is dangerous for the government and against the true interest of the companies themselves, and makes an earnest plea for the revision of the financial relations. The recent political episode in France renders this volume especially timely.

In his *Tableau des Origines et de l'Évolution de la Famille et de la Propriété* (Stockholm, Samson and Wallin; Paris, Félix Alcan), Maxime Kovalevsky has made briefly and tentatively a study that will have to be made sooner or later in painstaking detail. He

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has examined the evolution of the family and the evolution of property together. Beyond any doubt the successive forms of the family and the successive steps in economic development have been so closely related that no explanation of one is possible without some account of the other. But which has been cause and which effect, has not yet been shown, and this, the real problem, Kovalevsky only touches. He shows the connection in fact between the matriarchal family and a communism in movable goods, between the patriarchal family and agrarian communism, and between the individual monogamic family and the régime of private property. Beyond this he does not get far. Nevertheless, the book is one that the student of the family must have, particularly for its evidence as to the existence of maternal forms of the family among the Slavic peoples.

The French translation of the second part of *Les Lois du Progrès déduites des Phénomènes Naturels*, by R. Federici, is published by Félix Alcan, Paris. It is a rather close and suggestive study of the interaction of individual and social psychology; or, as the author would say, of the creation and perpetuation of the individual *ego* by the collective *ego*, and of the collective *ego* by and through individuals. The philosophy is Comtist, as plainly appears when the reader discovers that Federici makes moral progress a consequent of conscious knowledge of the natural world, rather than of an evolution of moral sentiments.

Canadian Independence, Annexation, and British Imperial Federation, by James Douglas (Putnams, 1894), forms the seventy-eighth number in the Questions-of-the-Day series. The author holds that Canada's lack of progress is attributable partly to natural causes, and partly also to defects in habits and methods of business, but finds that the people are disposed to ascribe it wholly to external causes and to look for a remedy in political changes. He, therefore, regards the present political condition of Canada as only temporary, and independence or annexation to the United States as her ultimate destiny. On annexation, however, as a panacea for Canadian ills, he is not disposed to look with favor. Independence he conceives to be the more probable event as well as the more desirable. As to how this is to be brought about he makes no definite suggestion. Indeed, his description of the sentiment of the great bulk of the people as "distinctly and strongly English," and other statements of like character seem to negative the idea that any radical change in the political condition of Canada is now "imminent." As for

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Imperial Federation, Mr. Douglas thinks it more likely to follow than to precede Canadian independence, though the grounds for this belief are rather hard to understand.

Dr. Justin Winsor's *Cartier to Frontenac* (Houghton, Mifflin & Co., 1894) is marked by all the chief characteristics that have won favor for his earlier writings. It is a clear, compendious narrative of the process through which the French explorers and settlers, by way of the St. Lawrence and the Great Lakes, penetrated to the interior valley of the continent and founded France's claim to the empire which was wrested from her in 1763. The period treated covers the exploits of Cartier, Champlain, Nicolet, Joliet and Marquette, Hennepin, Duluth and La Salle. An extensive series of contemporary maps and drawings are reproduced in the work, most of which, like the substance of the text, are to be found in the *Narrative and Critical History*, especially Volume IV. It is eminently proper, however, that Dr. Winsor himself should put into more popular and accessible form some part of that monumental accumulation of historical lore, which is destined for years to come to be a mine for the exploitation of far inferior book-makers.

The forty-seventh number in the series of studies in German *Staats- und Rechtsgeschichte*, edited by Professor Gierke, is entitled *Bodin: eine Studie über den Begriff der Souverainetät* (Breslau, Wilhelm Koebner, 1894), and is the work of Dr. E. Hancke. It embodies a minute analysis of Bodin's doctrine of sovereignty, with a comparison of the views of contemporary writers on the different points involved. It is a most useful work for the student of political philosophy.

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